IN THE SUPREME COURT

STATE OF MICHIGAN

Appealed from the Michigan Court of Appeals

JEFFREY SOTELO, SUSAN SOTELO, WALTER J. VANDER WALL, individually and as Trustee and PHYLLIS A. VANDER WALL, individually and as Trustee,

Plaintiffs/Appellees,

v

TOWNSHIP OF GRANT,

Defendant/Appellant.
_____/

Supreme Court No. _____

Court of Appeals
Case No. 238690

Lower Court:
Newaygo County Circuit Court
Case No. 00-018133-AW-M

APPLICATION FOR LEAVE TO APPEAL AND SUPPORTING BRIEF

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STATEMENT OF JUDGMENT OR ORDER APPEALED FROM AND RELIEF SOUGHT

Pursuant to cross-summary disposition motions, the Newaygo County Circuit Court (the "Trial Court") held in favor of Defendant/Appellant Grant Township, pursuant to its written opinion dated October 30, 2001. *See* Exhibit 1 as attached hereto. The final order of the Trial Court was dated December 11, 2001. *See* Exhibit 2 as attached hereto. The Trial Court's decision was based in part on OAG, 1981-1982 No. 5929, p 231 (June 25, 1981). *See* Exhibit 3 as attached hereto. Plaintiffs/Appellees appealed to the Michigan Court of Appeals. On February 21, 2003, the Michigan Court of Appeals (without oral argument) issued its opinion in this case for publication, wherein it reversed the decision of the Trial Court and remanded the case back to the Trial Court for entry of an order directing Grant Township to approve the division of the properties as requested by Plaintiffs/Appellees. *See* Exhibit 4 as attached hereto. Defendant/Appellant Grant Township requests that this Court grant leave to appeal in this case or, alternatively, reverse the decision of the Court of Appeals and reinstate the decision of the Trial Court below.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court of Appeals improperly interpreted the Michigan Land Division Act (MCLA 560.101 *et seq.*; MSA 26.430(101) *et seq.*) when it held that "parent parcel" boundaries are not necessarily fixed as of March 31, 1997 (the effective date of the Land Division Act) and can change over time due to land transfers between parent parcels.

II. Whether the Court of Appeals improperly applied a long-standing legal principle governing interpretation of statutes when it held that the Michigan Land Division Act is in derogation of the common law right to freely alienate real property, and as such, must be strictly and narrowly construed.

GROUNDS FOR APPEAL

The grounds for this application is based on MCR 7.302(B)(2) and (3). This Court has jurisdiction pursuant to MCR 7.301(A)(2). This case involves legal principles of major significance to the state's jurisprudence. Also, the issues in this case have significant public interest and the case is against a subdivision of the state of Michigan (i.e., a general law township). Specifically, Defendant/Appellant Grant Township respectfully asserts that if the Court of Appeals' decisions in this case regarding the following matters are not reversed by the Michigan Supreme Court, it will significantly alter the state's jurisprudence in major areas of municipal law and real property law.

1. Land Division Rights for Parent Parcels Under the Michigan Land Division Act (MCLA 560.101 *et. seq.*; MSA 26.430(101) *et seq.*)

The decision by the Court of Appeals effectively holds that parent parcel boundaries are not permanently fixed as of March 31, 1997 under the Michigan Land Division Act (the effective date of that statute) and can shift over time due to land transfers between parent parcels. Permitting the alternation of permanent parcel boundaries by landowners is not only contrary to the provisions and clear intent of the Land Division Act, but will also greatly affect (and alter) the potential number of land division rights permitted for a given property and will make administration of the Land Division Act by municipalities much more difficult. The decision of the Court of Appeals is not only contrary to OAG 5929, but also conflicts with the long-standing practice and interpretation of many municipalities around the state and agencies of the state of Michigan.

2. The Court of Appeals Held That the Land Division Act is in Derogation of the Common Law Right to Freely Alienate Real Property, and as Such, Should be Strictly and Narrowly Construed

Although it has long been recognized in Michigan that statutory enactments abrogating long-standing common law rules and principles must be strictly construed and cannot eliminate long-standing common law rules by implication, that maxim should not be applicable in the present case. Furthermore, the Land Division Act does not restrict or regulate alienability, but rather the development or use of property. The holding of the Court of Appeals with regard to such maxim is so broad (and improperly applied) that it would negatively impact the administration of the Land Division Act and undercut the goals and intent behind that statute.

I. STATEMENT OF FACTS

The published opinion by the Court of Appeals in this case is attached hereto as Exhibit 4. As the Court of Appeals points out on page 1 of its slip opinion, the salient facts in this case are not in dispute. The summary of the facts by the Trial Court (as also repeated by the Court of Appeals) is as follows:

> Prior to July 15, 1999, the land involved in this dispute was divided into two adjacent parcels in the township of Grant: Jeffrey and Susan Sotelo owned a 2.35 acre parcel of land ... and, immediately to the South, Robert Filut owned a 7.63 acre parcel of land ('Filut parcel'). On July 15, 1999, the size of the Sotelo parcel was increased when Filut conveyed 3.25 acres from his parcel to the Sotelos. After this conveyance, the reconfigured Sotelo parcel [('Sotelo parcel')] consisted of 5.6 acres, and the Filut parcel was reduced to 4.38 acres.
>
> By deeds dated July 15, 1999, the remaining portion of the Filut parcel was divided into four separate parcels which were more than one acre in size, and by deeds dated August 10, 1999, the Sotelo parcel was divided into four separate parcels which were more than one acre in size. The property owners structured the size of the resulting divisions in an apparent attempt to comply with the township's zoning ordinance that required a minimum parcel size of 1 acre. However, they made the divisions of land without first obtaining the approval from the township as required by the Section 109 of the LDA. MCL[ ] 560.109[ ].
>
> The township informed the property owners that they were in violation of the LDA, and the owners responded by requesting the township to approve the divisions previously made from their land. This request was extensively reviewed by the township; but, ultimately, all the divisions were denied by a resolution passed on July 27, 2000, because the township concluded that the divisions made within these parcels exceeded the number allowed under the LDA.
>
> The plaintiffs commenced this lawsuit to compel the township to approve all of the land divisions. While this lawsuit was pending, the issues involved in the case were reduced to deciding the legality of the divisions from the reconfigured Sotelo parcel, because the parties agreed that the transfer of a portion of the Filut parcel to the adjacent Sotelo parcel and the divisions made from the reconfigured Filut parcel were consistent with Michigan law and the township's ordinances.

Slip opinion of the Court of Appeals, pp 1-2 (Exhibit 4).

Both the Filut and Sotelo land divisions mentioned above were done illegally—pursuant to both Sections 102(d) and 109 of the Michigan Land Division Act (MCL 560.101 *et seq.*; MSA 26.430(101) *et seq.*)) (the "LDA") and the Grant Township Land Division Ordinance, no land divisions can occur until and unless the property owners have applied for and received approval from the local municipality. The parties did not submit a land division request to Grant Township (or receive Township approval for the land divisions) before July 15, 1999 or August 10, 1999.[1] Trial Transcript at pp 15-16 (Exhibit 5 as attached hereto); Trial Court Opinion at p 1. (Exhibit 1 as attached hereto)

Prior to the July 15, 1999 land transfer from the original parcel owned by Filut to the original parcel owned by the Sotelos, the Sotelos' parcel was too small to be split into more than two parcels under the Zoning Ordinance.[2] After the land transfer occurred, the reconfigured Sotelo parcel could theoretically be split into four parcels pursuant to the Zoning Ordinance, but Grant Township did not believe that all such splits could occur under the LDA.

Once Grant Township ("Township") officials discovered the illegal land divisions, the parties were notified.[3] Eventually, the parties submitted after-the-fact land division applications to the Township, which legally should have been submitted before the July 15,

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[1] Plaintiffs sought equitable relief in this case—both declaratory relief and a request for an injunction ordering Grant Township to recognize the disputed land divisions. A good argument exists that under the "unclean hands" doctrine alone, Plaintiffs/Appellees' claims should have been dismissed altogether.

[2] Section 109(1)(d) of the LDA requires all parcels resulting from a land division to meet the area requirements (including minimum lot size) of the local municipal zoning ordinance. *See* MCLA 560.109(1)(d); MSA 26.430(109)(1)(d).

[3] Appellant/Defendant shall be referred to hereinafter as the "Township."

1999 and August 10, 1999 land divisions occurred. The applicants requested to be able to create four parcels out of the reconfigured Sotelo parcel and four parcels out of the reconfigured Filut parcel. On or about March 28, 2000, the Township denied the proposed land divisions. The parties filed a notice of appeal with the Township regarding the land division denial. Pursuant to the Grant Township Land Division Ordinance, an appeal from a denial of land division approval is heard by the Grant Township Planning Commission ("Planning Commission"). The Planning Commission held a hearing on June 15, 2000 regarding this matter. Both the parties and their attorneys were present. After hearing from officials for the Township as well as the parties, their attorney, the Township Attorney, and several members of the audience, the Planning Commission voted to tentatively deny the proposed land divisions for the reasons discussed on the record and to ask the Township Attorney to draft a formal decision resolution. At its meeting on July 27, 2000, the Planning Commission formally adopted the resolution as its decision in the case. *See* Exhibit 6 as attached hereto. Thereafter, Plaintiffs/Appellees filed the present lawsuit.

The Township never disputed that land can be transferred across or between parent parcels for a "buffer" or for additional property in general. It has always been the Township's position, however, that land division rights under the LDA cannot be transferred across parent parcel boundaries (directly or indirectly), nor can property be transferred across parent parcel boundaries to add property to a parent parcel to enable the landowner to take advantage of land divisions that normally could not occur due to initial parcel size limitations. Similarly, the Township asserts that for purposes of allowable land divisions, original parent parcel boundaries are fixed under the LDA as of March 31, 1997 and cannot be altered by

subsequent land transfers. All parties agree that the original Sotelo parcel (before the July 15, 1999 inter-parcel land transfer) and the original Filut parcel were lawfully existing parent parcels as of the effective date of the LDA (March 31, 1997), and hence, were lawful parent parcels before July 15, 1999.

The Trial Court held in the Township's favor pursuant to cross-summary disposition motions which were heard by that court on September 18, 2001. Plaintiffs/Appellees appealed the decision of the Trial Court to the Michigan Court of Appeals. Even though both parties requested oral argument, the Court of Appeals notified the parties that oral argument would not be held. The Court of Appeals issued its published decision in this matter on February 21, 2003. See Exhibit 4 as attached hereto. The Court of Appeals did not find OAG, 1981-1982 No. 5929, p 237 (June 25, 1981) persuasive and declined to follow it. The Court of Appeals reversed the decision of the Trial Court and remanded the case to the Trial Court for entry of an order directing the Township to approve the division of the Sotelo parcel into four parcels.

II. ARGUMENT

A. Standard of Review

Interpretation of a state statute is a question of law. Since this matter was originally decided by summary disposition in favor of the Township and involves issues of law, the review in this case on appeal is de novo. *Spiek* v *Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

B. The Trial Court Properly Interpreted the Applicable Language of the Land Division Act

1. General statutory background

The Michigan Subdivision Control Act was enacted in 1967. One of the characteristics of the old Subdivision Control Act was that it limited the number of land divisions which could occur regarding an original parcel (i.e., a parent parcel). Portions of the Subdivision Control Act were amended effective in 1997 and the entire statute was renamed the Land Division Act at that time.[4] For purposes of the issues contained in this appeal, the Township respectfully asserts that there were no substantive changes between the old Subdivision Control Act and the new LDA. Unfortunately, there is an absence of Michigan case law regarding the issue at hand, both during the thirty years that the old Subdivision Control Act was in effect and during the six years since the new LDA was enacted.

Both the LDA and its predecessor statute contain what amounts to a "safe harbor" provision. That is, an unplatted property can be divided into a certain number of smaller parcels without the owner having to pursue either a plat (a formal "subdivision") or site condominium development and the attendant approvals. The original property (as it existed on March 31, 1997, the effective date of the LDA) is referred to as the "parent parcel," and cannot be divided into more than the maximum number of parcels specified within the LDA without the owner having to pursue a formal plat or site condominium

[4] In past briefs, Plaintiffs/Appellees have stated that "the Subdivision Control Act of 1967 has been repealed and replaced with the LDA." That is not technically correct. The new legislation adopted in late 1996 (effective on March 31, 1997) amended several portions of the Subdivision Control Act and renamed the entire statute the "Land Division Act." In fact, the majority of the text of the Subdivision Control Act was not changed by the LDA and remained intact. Therefore, it is probably inaccurate to state that the LDA "repealed and replaced" the Subdivision Control Act.

project.[5] Under the LDA, new parcels cannot be created (i.e., land divisions cannot occur)without complying with the LDA and without receiving prior municipal approval. Why does such a safe harbor provision exist? The Michigan Legislature apparently believed that land divisions which result in relatively few parcels would not have a big impact upon the community and environment, whereas land divisions resulting in larger numbers of parcels should have to go through the more vigorous and comprehensive governmental plat review and approval process.

Admittedly, neither the old Subdivision Control Act nor its LDA successor is a model of clarity. The statutory language of both is complex and often confusing. It is a mystery why more developers and property owners did not file lawsuits over local municipal interpretations of the two statutes over the last 30 plus years given the statutory language. The lack of such litigation is likely based on the willingness of most property owners and developers to simply cede to a local municipality's interpretation of the statutes, or alternately, is based on a decision by them to proceed through the platting process or to develop a site condominium project, neither of which is subject to the land division limitations of the statutes.

2. Municipal review of land divisions

The LDA does expressly permit municipalities to regulate and deny land divisions if the resulting parcels do not meet the minimum lot area requirements imposed by the local

[5] Although both the old and the new statutes refer only to a plat (i.e., a "subdivision") as the way to exceed the maximum number of metes and bounds splits allowed, the Michigan Attorney General opined in the late 1980s that a site condominium project could also act like a plat in exceeding the land division limits applied to metes and bounds parcels.

zoning ordinance. *See* MCLA 560.109(1)(d); MSA 26.430(109)(1)(d). Whether municipalities like it or not, the LDA also imposes upon local municipalities (including townships) the legal duty to review all land divisions and to approve or deny the same.[6] This duty exists whether or not a municipality has adopted its own local land division ordinance. Part of a land division review by a township (as mandated by the LDA) involves determining how many parcels a parent parcel can be divided into under the LDA.

The LDA sets the number of land divisions allowed per parent parcel. The LDA specifies what constitutes a parent parcel. The LDA governs how and when land can be transferred between parcels. The LDA permits a township to deny a land division if the resulting parcel or parcels do not meet the minimum lot size requirements under the local municipal zoning ordinance. *See* MCLA 560.109(1)(d); MSA 26.430(109)(1)(d). In this case, the original Sotelo parcel was only 2.35± acres in size, such that the LDA only permitted two parcels to be created out of the original Sotelo parcel, since the Grant Township Zoning Ordinance required that all new parcels be at least one acre in size. It was only by transferring additional property from the original Filut parcel to be added onto the original Sotelo parcel that the owners of the parcel to the north were able to obtain sufficient land area to be able to theoretically divide the reconfigured Sotelo parcel into four parcels. Plaintiffs/Appellees claim that such transfer of land between parent parcels could be utilized to permit four smaller parcels to be created out of the reconfigured Sotelo parcel

[6] This is essentially an unfunded state mandate, since the fees charged by municipalities for land division reviews rarely cover the true costs of municipal administration. If a municipality has adopted its own land division ordinance, the municipality must comply with both the LDA and its own ordinance when reviewing proposed land divisions. Even if the local municipality has not adopted its own local land division ordinance, it still must administer land divisions under the LDA.

under the LDA, while the Township asserts that land could not be transferred from the original Filut parcel to the original Sotelo parcel in order to permit the Sotelo parcel to take advantage of creating the maximum number of parcels otherwise allowed where sufficient land area was present. Or put another way, it is the Township's position that the original boundary lines of parent parcels under the LDA do not change over time for purposes of when the number of permissible land divisions have been "used up."

If the decision of the Court of Appeals in this matter is permitted to stand, it will cause significant problems for municipalities (townships, villages, and cities, and in a few cases, counties where a particular county administers the LDA for a very sparsely populated township) in administering the LDA. Although the topic in general might seem rather dry to nonmunicipal officials, administering the LDA was difficult enough in the past, but the decision of the Court of Appeals in this case will make it even more difficult and less certain. Under the LDA, municipalities must determine what constituted a parent parcel as of March 31, 1997. Why? In a nutshell, to determine whether all the land division rights have been used up for a given parent parcel, and if any are left, precisely how many. That might not sound so difficult in the abstract, but if one makes a map of various parent parcels and proceeds to do hypothetical land divisions, the difficulty of administering the LDA becomes readily apparent. If parent parcel boundary lines can shift over time due to land transfers between prior parent parcels (which transfers are entirely within the control of the property owners who will benefit by obtaining potential additional land division rights), it will make the process of "tracking" parent parcels exceedingly difficult for municipalities.

3. The merits

The positions of the parties in this case are fairly straightforward. Plaintiffs/Appellees assert that land can be transferred between parent parcels to give one of the parcels additional and sufficient land to be able to take advantage of the maximum number of land divisions which would be available under the LDA had the parcel receiving the extra land been larger to begin with. As a corollary, Plaintiffs/Appellees' implied position is that original parent parcel boundaries (i.e., those that existed as of March 31, 1997, the effective date of the LDA) can move, or at least are not determinative for purposes of the number of land divisions allowed when property exchanges between parent parcels alter conditions. It is the Township's position that while land can be transferred between parent parcels for a "buffer" or to increase the size of a parcel which could have been created anyway, such land transfers cannot be utilized to let property owners take land divisions they would not otherwise be able to create due to zoning size limitations applicable to the original parent parcel. Again, the Township's position on the related issue is that parent parcel boundaries do not change over time (despite land transfers between parent parcels) for purposes of the permissible number of land divisions available under the LDA.

Section 102(g) of the LDA defines "parcel" to mean "a continuous area or acreage of land which can be described as provided for in this act." MCLA 560.102(g); MSA 26.430(102)(g).

Section 560.102(i) defines "parent parcel" or "parent tract" as "a parcel or tract, respectively, lawfully in existence on the effective date of the amendatory act that added

this subdivision." MCLA 560.102(i); MSA 26.430(102)(i). That effective date was March 31, 1997.

A parent parcel can be divided into a certain number of "metes and bounds" parcels without the property owner having to create a formal plat (i.e., a "subdivision") or site condominium. The LDA defines "subdivide" or "subdivision" as meaning:

> [T]he partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting requirements of this act by sections 108 and 109. 'Subdivide' or 'subdivision' does not include a property transferred between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.

MCLA 560.102(f); MSA 26.430(102)(f) (emphasis added).

The status of a property as a "parent parcel" is important since the size of the parent parcel determines how many land division rights are involved. A parent parcel is a parcel lawfully in existence as of March 31, 1997. The parties agree that under the LDA, a parent parcel which is between 0 and 19.99 acres in size has four land division rights (i.e., it can be divided into not more than four parcels in total). The LDA provision which specifies the maximum number of land divisions allowed (without requiring a formal plat) states in relevant part as follows:

> Sec. 108. (1) A division is not subject to the platting requirements of this act.
>
> (2) Subject to subsection (3), the division, together with any previous divisions of the same parent parcel or parent tract, shall result in a number of parcels not more than the sum of the following, as applicable:

(a) For the first 10 acres or fraction thereof in the parent parcel or parent tract, 4 parcels.

* * *

MCLA 560.108; MSA 26.430(108) (emphasis added).

The Township respectfully asserts that the LDA makes it clear that parent parcel boundaries do not change over time (regardless of land transfers between adjoining parent parcels) and that the boundary lines of a parent parcel for purposes of permissible splits or land divisions under MCLA 560.108; MSA 26.430(108) became irrevocably fixed as of March 31, 1997 (i.e., a parent parcel's boundaries are once and forever determined as of March 31, 1997). One prominent Michigan real property commentator has also noted that parent parcel status is locked in as of March 31, 1997:

> The new rules are applicable to *parent parcels* and *parent tracts* (those are different things). The term *parent parcel* was not defined under the SCA but instead arose in the vernacular as a reference to parcels of real estate from which splits did or could emanate. After 10 years, any new parcel of land would, by the passage of time, be lawfully subject to division and would become a parent parcel. Under the LDA, the terms *parent parcel* and *parent tract* are statutorily defined in new Section 102(i), MCL 560.102(i), and the concept is frozen in time. Unplatted land either is or is not a parent, and that status can never change unless the law changes.
>
> What, then, is a parent parcel under the new law? Simply put, it is a parcel of land 'lawfully in existence' on March 31, 1997. MCL 560.102(i). *Lawfully in existence* is not defined, but presumably it means created in accordance with applicable law.
>
> There is a difference between a parent parcel and a parent tract under the new law, but the same rules apply to both. A *tract* is '2 or more parcels that share a common property line and are under the same ownership.' A *parent tract* is a tract as it existed on March 31, 1997. Thus, the new law creates an assemblage. And the rules apply to the assembled tracts as if they were one parcel.
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> * * *

John Cameron, *Michigan Real Property Law: Principals and Commentary* (2d Ed.-2002 cumulative supplement to Vols. 1 and 2), § 21.2a, p 227 (emphasis added; footnote omitted).

Plaintiffs/Appellees have asserted, and the Court of Appeals has agreed, that transfers of property between two adjoining parent parcels effectively changes the parent parcel boundaries for purposes of the land division rights specified under Section 108 of the LDA (MCLA 560.108; MSA 26.430(108)). This interpretation of the Court of Appeals and Plaintiffs/Appellees could lead to bizarre results.[7] For example, theoretically, a parent parcel which is 1/10th of an acre in size would normally be accorded four land divisions under the LDA, so long as all applicable municipal zoning requirements (including lot size) are met. Suppose the municipality involved has a 2-acre minimum lot size requirement in its zoning ordinance. Initially, the 1/10-acre parcel could not be divided due to its small size. However, the adjoining property owner could transfer 10 acres to be combined with the 1/10th-acre parcel. Under the view of the Court of Appeals and Plaintiffs/Appellees, that reconfigured 10.1-acre parcel could be divided into four parcels. With all due respect, the Legislature could not have intended such absurd results.

Pursuant to the view espoused by the Court of Appeals and Plaintiffs/Appellees, landowners could effectuate shifting parent parcel boundaries unilaterally by property

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[7] Courts should not interpret statutes in a manner that leads to absurd results. *Rowell* v *Security Steel*, 445 Mich 347, 354; 518 NW2d 409 (1994); *Brandon Charter Twp* v *Tippett*, 241 Mich App 417, 424-426; 616 NW2d 243 (2000). Accordingly, if two possible interpretations of a statute are plausible and one interpretation leads to consequences that are mischievous and absurd, the other interpretation by which such consequences can be avoided should be utilized. *Salas* v *Clements*, 399 Mich 103, 109; 247 NW2d 889 (1976) At the Trial Court level, Plaintiffs/Appellees pooh-poohed the Township's argument that their view could often lead to absurd results. Nevertheless, the railroad land strip situation mentioned hereinafter is a perfect example of this. An adjoining property owner could own one-tenth of an acre in a municipality which requires that all new parcels be at least one acre in size. The railroad could transfer a 3.9-acre portion of an unused adjacent railroad land strip to the property owner, who would now own four acres in total. Thus, under Plaintiffs/Appellees view, the property owner who previously had only one-tenth of an acre now has four acres, which he/she could divide into four parcels.

transfers, thus "resetting" parent parcel boundaries and altering the number or combination of land divisions available. It is highly unlikely that the legislature would have intended to allow the very property owners who are regulated by the LDA to so manipulate the statute and to cause potential mischief.

The Township's position in this matter would work no hardship on Plaintiffs/ Appellees. Plaintiffs/Appellees are free to pursue either a plat or site condominium project of the reconfigured Sotelo parcel (as well as including the reconfigured Filut parcel, if the owners thereof agree to be part of it), consistent with the zoning regulations. The Trial Court's original holding that Plaintiffs/Appellees are limited to creating two parcels out of the reconfigured Sotelo parcel by simple land divisions under the LDA would not foreclose these other possibilities. The Trial Court's holding would simply have prevented Plaintiffs/Appellees and other property owners from playing games in an attempt to increase the number of land divisions they can take for a property by transferring land back and forth between parcels via slight of hand.

C. The Trial Court Properly Considered Michigan Attorney General Opinion No. 5929 (Dated June 25, 1981) when Interpreting the Land Division Act Question at Issue in this Case

The Trial Court relied in part upon OAG, 1981-1982, No. 5929, p 237 (June 25, 1981). See Exhibit 3. The Court of Appeals pointed out that it is not bound by an opinion of the attorney general, and did not find that opinion persuasive. The Court of Appeals Slip Op. at p 4 (Exhibit 4). Respectfully, the Township asserts that the Attorney General Opinion at issue is persuasive and correct.

OAG 5929 should be applicable to the current case, but does utilize slightly different reasoning than the Township did during its Planning Commission proceedings. OAG 5929 essentially stated that the boundaries of a parent parcel do not change. Therefore, despite land transfers between or across parent parcel boundaries, the original parent parcels retain their original boundary lines for purposes of ascertaining the number of land division rights permitted.

Although there is apparently no appellate case law on point regarding the issue in this appeal, OAG 5929 should be applicable. *See* Exhibit 3. While Michigan Attorney General opinions are not binding precedent in the courts, they nevertheless can be considered by Michigan courts, particularly when they are persuasive.[8] Even though OAG 5929 applies to the old Subdivision Control Act, its reasoning is equally applicable to the LDA since the relevant provisions of the statute in 1981 and today remain unchanged (particularly, concepts including parent parcels) for purposes of the specific issue before this Court.

Interestingly, OAG 5929 takes a position much more severe as to Plaintiffs/ Appellees in this case than the position taken by Grant Township. According to the Michigan Attorney General, as soon as the property in the present case was transferred from the original Filut parcel to the original parcel, the two parcels became effectively "commingled" and both parcels in total would have only four land divisions (i.e., even though they would have theoretically had eight land divisions rights in total (or four each)

[8] Also, due to the absence of case law over the years, Michigan Attorney General opinions regarding the old Subdivision Control Act and the new LDA have tended to be more authoritative for those persons who regularly deal with those statutes than might be the case in other areas of law.

before the transfer of the land, once the land was transferred or commingled, the two parcels were only allowed four parcels in total when divided). Pursuant to OAG 5929, the Plaintiffs/Appellees would only be allowed four parcels in total to be created out of the original two parcels and would have to utilize a plat or site condominium project to obtain any parcels or lots in excess of four.

In OAG 5929, the Attorney General lists a hypothetical situation whereby Adams owns a one-acre parcel (Parcel A), which constitutes a parent parcel. Brown owns an adjoining seven-acre parcel (Parcel B), which is also a parent parcel. Brown transfers three acres from out of Parcel B to Adams and Adams adds that three acres of land to Parcel A. Thereafter, Parcel B becomes only four acres in size, while Parcel A also becomes four acres in size. After the land transfer occurs, Adams and Brown each propose to divide their reconfigured parcels into four one-acre parcels for purposes of sale or building development. Although some of the language of the opinion is somewhat confusing, the Attorney General essentially held that the transfer which caused a commingling of property between parcels created one overall parent parcel comprised of Parcels A and B, such that only four parcels in total could be created out of Parcels A and B as combined without platting. If the parties desired to create any lots or parcels in addition to four, a plat would have to be utilized.[9]

The Attorney General stated in part as follows:

> While an assemblage of a four acre tract was effected by the conveyance of a three acre tract to Adams, neither parent Parcels A nor B lose its identity for purposes of determining whether a 'subdivision' is effected and a plat required ...

[9] As mentioned above, after the late 1980s, it was also recognized that a site condominium project could be utilized, as well as a plat, to exceed the number of land divisions allowed.

OAG 5929 at p 239. The Attorney General also stated, "Should Adams be first in time to make a division of his or her ownership into four one-acre parcels, there would have been created from Parcel B five parcels of land ..." *Ibid.* Presumably, the five parcels of land referred to by the Attorney General are the four parcels created by Adams out of the enlarged Parcel A and the remaining Parcel B.

A critical distinction between two separate and distinct concepts must be kept in mind when analyzing both OAG 5929 and the issue in this case. The first concept involves whether or not the transfer of land between one parcel and another constitutes a land division. Under the old Subdivision Control Act prior to 1990, there was disagreement regarding this issue. It was almost universally accepted that land could be transferred between parent or other parcels—the issue in dispute was whether or not a transfer of land itself constituted a land division, such that the "transferor" lost one land division right pursuant to the transaction. Most municipalities did not view the land transfer itself as a land division, so long as the transferred land became attached to the other parcel. This issue was not the issue highlighted in OAG 5929. The second and separate concept which should be kept in mind is whether land can be transferred from one parent parcel to a second parent parcel in order to allow the parent parcel receiving the additional land to take advantage of the maximum number of land division rights theoretically accorded to it and which could not have been taken prior to the land transfer due to the small size of the second parent parcel as it originally existed. Or put another way, do parent parcels lose their identity or do their boundary lines change for purposes of the permissible number of land divisions allowed when land is transferred between parent parcels? This is the issue

which OAG 5929 dealt with. Plaintiffs/Appellees (and the Court of Appeals) tend to mix these two concepts (i.e., the fact that while a land transfer between parent parcels might not constitute a "division," that does not necessarily change the boundary line of the parent parcels for purposes of determining allowable land divisions) and pick and choose various aspects from each concept. Quite simply, OAG 5929 should still be applicable to the present fact situation.

As mentioned above, there was some dispute before 1990 regarding whether the transfer of property from one parcel to another constituted a land division, although most experts believe that it did not. The Michigan Legislature amended the definitions section of the old Subdivision Control Act in 1990 to make it clear that the simple act of transferring land from one unplatted parcel to another did not constitute a land division in and of itself. The impetus for such legislative change was not only to clarify the situation in general, but was also prompted by a situation involving railroad properties. Various railroads owned long, thin stretches of land throughout Michigan, in addition to non-fee simple lands, such as easements and rights-of-way. Railroads were liquidating many of these properties by transferring portions of these land strips to the adjoining private property owners. Since these narrow railroad strips of land could be miles long, they would very quickly use up their land division rights if each transfer of a portion of a long land strip to an adjoining property owner constituted a land division. Thus, the amendment to the Subdivision Control Act in 1990 clarified this situation.

It is important to note that the 1990 legislative amendment dealt only with the narrow issue of whether or not a transfer of land from one parcel to another in and of itself

constitutes a land division. The amendment did not deal with the matter at issue in this case, which is also the issue addressed by OAG 5929—that is, whether the transfer of land from one parent parcel to another parent parcel would cause the boundary lines of the original parent parcels to be "reset" for purposes of the number of land divisions allowed within the area or "footprint" of each original parent parcel. Although the Legislature could have expressly dealt with this issue in the 1990 amendment, it did not. The legislative amendment never expressly mentions the impact of such land transfers between parcels on total land division rights (or the ability to utilize them), nor does the amendment indicate that such land transfers can alter the original boundaries of a parent parcel. Had the Legislature intended to overturn OAG 5929 by this amendment (or by the LDA), it likely would have expressly addressed the specific issue. It is also interesting to note that the legislative amendment (as well as the LDA itself) only mentions the transfer of land between "parcels" and does not state that such transfers could be made between "parent parcels" in a way which would alter their boundaries for purposes of determining land division rights. The absence of the phrase "parent parcel" is a further indication that the legislative amendment (and the LDA) did not overturn OAG 5929 and should not be construed in the fashion advocated by Plaintiffs/Appellees. Finally, the legislative amendment at issue was enacted some nine years after OAG 5929 was issued, thus making it much more difficult to argue that the legislature was displeased by OAG 5929 and that the legislative amendment nine years later was intended to override OAG 5929.

D. The Trial Court Applied the Appropriate Standards when Interpreting the Land Division Act in this Case

Throughout this case, Plaintiffs/Appellees have cited the maxim that where a statute is in derogation of the common law, that statute must be strictly and narrowly construed in favor of the property owner. *See* Plaintiffs/Appellees' Court of Appeals Brief at pp 8, 9. Plaintiffs/Appellees assert that the LDA (and its predecessor statute, the Subdivision Control Act) are in derogation of the common law such that the maxim should apply. *Id.* The Court of Appeals agreed with Plaintiffs/Appellees and stated in its opinion as follows:

> As plaintiffs point out, the LDA is in derogation of the common law right to freely alienate real property and, consequently, it is to be strictly and narrowly construed. See *Rusinek* v *Schultz, Snyder & Steele Lumber Co*, 411 Mich 502, 507-508; 309 NW2d 163 (1981). We will not read into the statute prohibitions on alienation not clearly supported by its language.

Court of Appeals Slip Op at 3 (Exhibit 4).

With all due respect to the Court of Appeals, that court's reliance on such maxim is in error. Normally, that maxim applies to legislation overturning long-established common law rules and principles. For example, presumably the longstanding common law rule against perpetuities and the rule of joint and several liability for tortfeasors could only be overturned by a clear statutory enactment to the contrary. No longstanding common law rule is applicable in the present case.

Even if this rule of statutory construction (i.e., statutes enacted in derogation of the common law are narrowly construed) is applied to the present case, the LDA clearly specifies that parent parcel boundaries are fixed as of March 31, 1997, and thus, cannot be varied by land transfers. This Court in *Donajkowski* v *Alpena Power Co*, 460 Mich 243; 596

NW2d 243 (1999), noted that this rule of statutory construction can be misapplied. That is, if the Legislature narrows or even eliminates a common law right by clear statutory language, the intent of the Legislature should prevail. *Ibid* at 256-257. The *Donajkowski* court noted in a footnote as follows:

> We note that this venerable rule acts as a guide to the courts in construing statutes, not as a limitation on the Legislature. In other words, the fact that the statute enacted in derogation of the common law must be construed narrowly is not to say that the Legislature is precluded from changing the common law. Quite the contrary; our Legislature is always free to change the common law. Indeed, it has express constitutional authority to do so. Const 1963, art 3, § 7; *Meyers* v *Genesee Co Auditor*, 375 Mich 1, 7; 133 NW2d 190 (1965) (O'HARA, J.).

460 Mich 243, 256 (n-14).

Notwithstanding the general rule that a statute in derogation of the common law must be strictly construed, it is well-settled that statutes must be construed sensibly and in harmony with legislative purpose. The manifest intent of the Legislature (where fairly expressed in a statute) should not be disregarded simply because a statute is in derogation of the common law. *Sibley* v *Smith*, 2 Mich 487 (1853).

The Court of Appeals is also incorrect when it indicates that the LDA restricts the alienation of real property and constitutes a prohibition on alienation. *See* the Court of Appeals Slip Op at p 3 (Exhibit 4). *Webster's Third New International Dictionary* (1971 version) defines "alienate" in this context to mean "to convey or transfer to another (as title, property, or right): part voluntarily with ownership of: ALIEN—usu. used of the transfer of the title to property by act of the owner as distinguished from a transfer entirely by operation of law (as in case of descent)." That dictionary also defines "alienable" to mean that which "may be transferred to the ownership of another." *Black's Law Dictionary* (7th

Ed-1999) defines "alienable" to mean "capable of being transferred to the ownership of another; transferable <an alienable property interest>.

The LDA does not prohibit property owners from selling or transferring property. Rather, the LDA regulates the number of parcels or lots which can be created out of or from a given property without having to create a plat or site condominium development. The LDA is not a restraint on alienation, but rather on the developability or use of property. As such, regulations of the LDA are similar to the minimum lot dimensional or size requirements contained in many zoning regulations—yet zoning regulations are not referred to as a restraint upon alienability. The difference between restraints on alienation and restraints on the use or development of property (a distinction which the Court of Appeals fails to make) is a very important distinction. Plaintiffs/Appellees in this case were free under the LDA (and regulations of the Township) to sell the original parcel (as well as up to two parcels created out of that original parcel) to anyone they desired. The LDA did not or would not prevent such alienation. The LDA simply regulates how many parcels can be created out of that original property, regardless of whether or not the resulting parcels are kept or sold.

Technically, the LDA's definition of "parent parcel" and its regulation of the divisions of real property are not "in derogation of the common law," but rather, constitutes amendments to the long-standing prior Subdivision Control Act. When the LDA's amendments were added in late 1996, no common law right existed which allowed an unlimited ability to divide one's property. Rather, the Subdivision Control Act placed severe restrictions upon land division options for more than 25 years prior thereto. Furthermore,

even though the formal definition of parent parcel was added by the LDA amendments in late 1996, the concept of a parent parcel was inherent in the old Subdivision Control Act and was well-recognized on a widespread basis throughout the state of Michigan before 1996.

There are additional considerations regarding interpretation of the LDA which should be taken into account when interpreting the statute which apparently were not considered by the Court of Appeals. The Michigan Legislature was cognizant of problems associated with urban sprawl and poor land use planning in Michigan when it adopted the amendments to the old Subdivision Control Act in late 1996 which became the Michigan Land Division Act. The preamble of the Land Division Act states in part as follows:

> An act to regulate the division of land; to promote the public health, safety, and general welfare; to further the orderly layout and use of land; to require that the land be suitable for building sites and public improvements and that there be adequate drainage of the land ...

Given the problems associated with urban sprawl and the fact that the improper division and use of land contribute to such sprawl (which are areas regulated by the LDA), and that sprawl and the improper division and use of land can directly negatively impact natural resources, one can reasonably argue that the LDA should be broadly construed in light of the following mandate in the Michigan Constitution:

> The preservation and development of the natural resources of the state are hereby declared to be of paramount public concern and the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

Mich Const, Art 4, § 52.

Interestingly, this Court in *Hess v West Bloomfield Township*, 439 Mich 550; 486 NW2d 628 (1992), utilized similar reasoning to construe the zoning authority of a township broadly. The *Hess* court noted that in 1978, the Michigan Legislature amended the Township Rural Zoning Act (MCL 125.271 *et seq.*; MSA 5.2963(1) *et seq.*) to provide that townships shall have the authority to enact zoning regulations to "promote public health, safety, and welfare." By adding such language, the *Hess* court indicated that a broad grant of authority was intended by the Legislature. *Hess* at 564. The *Hess* court also quoted Article 4, Section 52 of the Michigan Constitution of 1963 and stated as follows:

> Thus, by granting townships the authority to promote the public health, safety, and general welfare through enactment of zoning ordinances, the Legislature was complying with this Constitutional mandate to protect the environment, including bodies of water, from impairment or destruction.

Hess at 565.

It should be noted that the preamble to the LDA contains the exact same language (except for the word "general" before the word "welfare") as the mandatory language which the *Hess* court indicated should cause the Township Rural Zoning Act to be construed broadly:

> Preamble to the LDA – 'an act to ... promote the public health, safety, and general welfare ...'
>
> 1978 amendment to the Township Rural Zoning Act – (MCL 125.271; MSA 5.2963(1))—to 'promote public health, safety, and welfare.'

E. The Trial Court Properly Decided this Case

For the above-mentioned reasons, the Township respectfully asserts that the Trial Court properly decided this case in favor of the Township. In particular, the following

provisions of the written Opinion issued by the Trial Court on October 30, 2001, indicate the Trial Court's grasp of the LDA and its proper application of the LDA to this case:

> However, [the 1990] change in the law does not necessarily change the legal principle that the original parent parcels do not immediately lose their identity as a parent parcel for purposes of counting the number of divisions available under the LDA. Instead, the creation of an exempt split (e.g., transfers between adjacent parcels) merely results in a division that will not be counted against the number of divisions potentially available to a parent parcel ... The division of the Filut parcel into four separate parcels equaled, but did not exceed, all divisions available to the Filut parent parcel. The divisions from the reconfigured Sotelo parcel on August 10, 1999, violated the LDA, because some of the divisions were made within the Filut parent parcel and the divisions available to this parcel had been exhausted.

Trial Court Opinion at pp 2-3. Exhibit 4.

F. Significant Deference Should be Accorded by the Courts to a Municipality's Decision Under the Land Division Act

Below at the Trial Court level, the Township also asserted in its defense that the burden of proof in this matter should be on the Plaintiffs/Appellees and that significant deference should be accorded to the Township's decision under the LDA since it is the Township which must interpret and administer the LDA. The Trial Court did not address this issue in its decision, presumably because its decision rested on other independent grounds. Nevertheless, the Township respectfully asserts that this constitutes one additional independent ground as to why the Trial Court's decision in this case should be affirmed.

The decision by the Township that the reconfigured Sotelo parcel is only permitted two parcels to be carved out of it is based on the Township's administration of the LDA pursuant to MCLA 560.109; MSA 26.430(109). Under the LDA, a municipality is required to review land divisions (including determining what constitutes a given parent parcel and

how many division rights are left, if any). It can be argued that the applicable standard of judicial review of the Township's decision is similar to what occurs when a court reviews the decision of a Michigan township zoning board of appeals pursuant to MCLA 125.293a; MSA 5.2963(23a) *et seq.* *See also, Charleton Sportsman's Club* v *Exeter Twp*, 217 Mich App 195, 200; 550 NW2d 867, 869 (1996). Section 28 of Article 6 of the Michigan Constitution of 1963 appears to establish the proper standard of review in a case such as this. That section provides in relevant part as follows:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record...

Mich Const of 1963, Art 6, § 28.

In this case, the Grant Township Planning Commission held a hearing on this matter and decided the appeal by Plaintiffs/Appellees from the decision of Township staff. *See* Exhibit 6.

Under the constitutional standard mentioned above, court review is limited. "Great deference must be given to an agency's choice between two reasonable differing views as a reflection of the exercise of administrative expertise." *McBride* v *Pontiac Sch Dist*, 218 Mich App 113, 123; 553 NW2d 646, 651 (1996). The courts should accord due deference to the Township's Planning Commission's decision and not "invade the province of exclusive administrative fact-finding by displacing an agency's choice between two reasonably

EXHIBIT 1

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

JEFFREY SOTELO, SUSAN SOTELO,
WALTER J. VANDERWALL, individually
and as Trustee and PHYLISS VANDERWALL,
Individually and as Trustee,

File No. 00-18133-AW-M

v

TOWNSHIP OF GRANT,

OPINION

Defendant.

The parties filed cross motions for summary disposition under MCR 2.116(C)(8) and (10) concerning the legality under Michigan's Land Division Act ('LDA"), MCL 560.101 *et seq.*; MSA 26.430(101) *et seq.*, of certain divisions of land made by the plaintiffs. I grant summary disposition in favor of the Township of Grant ("Township"), because I conclude that the divisions made by the plaintiffs exceed the number available to them under the LDA.

I

Prior to July 15, 1999, the land involved in this dispute was divided into two adjacent parcels in the Township of Grant: Jeffrey and Susan Sotelo owned a 2.35 acre parcel of land ("Sotelo parcel"), and, immediately to the South, Robert Filut owned a 7.63 acre parcel of land ("Filut parcel"). On July 15, 1999, the size of the Sotelo parcel was increased when Filut conveyed 3.25 acres from his parcel to the Sotelos. After this conveyance, the reconfigured Sotelo parcel consisted of 5.6 acres, and the Filut parcel was reduced to 4.38 acres.

By deeds dated July 15, 1999, the remaining portion of the Filut parcel was divided into four separate parcels which were more than one acre in size, and by deeds dated August 10, 1999, the Sotelo parcel was divided into four separate parcels which were more than one acre in size. The property owners structured the size of the resulting divisions in an apparent attempt to comply with the Township's zoning ordinance that required a minimum parcel size of 1 acre. However, they made the divisions of land without first obtaining the approval from the Township as required by the Section 109 of the LDA. MCLA 560.109; MSA 26.430(109).

The Township informed the property owners that they were in violation of the LDA, and the owners responded by requesting the Township to approve the divisions previously made from their land. This request was extensively reviewed by the Township; but, ultimately, all the divisions were denied by a resolution passed on July 27, 2000, because the Township concluded that the divisions made within these parcels exceeded the number allowed under the LDA.

The plaintiffs commenced this lawsuit to compel the Township to approve all of the land divisions. While this lawsuit was pending, the issues involved in the case were reduced to deciding the legality of the divisions from the reconfigured Sotelo parcel, because the parties agreed that the transfer of a portion of the Filut parcel to the adjacent Sotelo parcel and the divisions made from the reconfigured Filut parcel were consistent with Michigan law and the Township's ordinances.

EXHIBIT 1

II

Section 108 of the Land Division Act, MCL 560.108; MSA 26.430(108), provides that a parent parcel of land, 10 acres or less, may be divided into four parcels. A "parent parcel" is defined under Section 102(i) of the LDA, MCL 560.102(i); MSA 26.430(102)(i), as any parcel of land lawfully in existence on March 31, 1997, the date the LDA took effect. Applying these principles, the Sotelo and Filut parcels, as they existed prior to July 15, 1999, were parent parcels, and under Section 108, each potentially could be divided into four parcels.

Under Section 109 of the LDA, MCL 560.109; MSA 26.430(109), the local municipality (in this case, the Township of Grant) must approve or disapprove any proposed divisions of land. The municipality must first determine the number of divisions available to the parcel under section 108, and then under section 109, it must determine that each resulting parcel is accessible, meets minimum standards regarding depth to width ratio, and complies with any width and area requirements provided by its local ordinances.

All parties agree that the property added to the Sotelo parcel from the Filut parcel on July 15, 1999, was not a division requiring Township approval under the LDA, because Section 102(d) and (e) provide that the transfer of land between adjacent parcels is an "exempt split." MCL 560.102(d), (e); MSA 26.430.(102)(d),(e). In other words, an exempt split does not count against one of the potential divisions available to the parent parcel under Section 108 of the LDA.

In this case, the Township argues that the divisions made from the reconfigured Sotelo parcel violate the LDA. The basis for the Township's position comes in part from an opinion from Michigan's Attorney General ("OAG 5929") interpreting the Subdivision Control Act , 1967 P.A. 288. OAG, 1981, No. 5929 (June 25, 1981).

The following example formed the factual basis for OAG 5929: (1) Adams owns a one-acre parcel known as parcel A and Brown owns a contiguous seven-acre parcel known as parcel B; (2) Adams acquires three acres from Brown which was immediately adjacent to the original parcel A; and (3) Adams and Brown each propose to divide their new four-acre parcels into four separate one-acre parcels. This example was evaluated under the law as it existed on June 25, 1981, and it assumed that each original parcel could potentially be split into four parcels under the Michigan Subdivision Control Act.

Although each original parcel could be potentially divided into four separate parcels, the Attorney General concluded that the proposed development plan exceeded the number of divisions available to the parcels under then existing Michigan law. This conclusion was based on the principle that "neither parent Parcels A nor B lose its identity for purposes of determining whether a subdivision is effected and a plat required . . ." OAG, 1981, No. 5929, *supra* at 239. Following this principle, the boundary lines of the original Parcel B must be superimposed on the development plan to determine the parent parcel, and once this occurs, it is readily apparent that more than four divisions would be made within this parcel.

The plaintiffs argue that the principles of OAG 5929 no longer apply to this factual illustration, because the Subdivision Control Act of 1967 has been extensively amended and renamed by the LDA. For example, when this opinion was issued, many legal commentators opined that transfers of land between adjacent parcels were considered a division under the Subdivision Control Act. Today, Section 102(d) and (e) of the LDA clearly establishes that such a transfer is an exempt split, and it does not count against the number of divisions available to the parent parcel.

However, this change in the law does not necessarily change the legal principle that the original parent parcels do not immediately lose their identity as a parent parcel for purposes of counting the number of division available under the LDA. Instead, the creation of an exempt split (e.g., transfers between adjacent parcels) merely results in a division that will not be counted against the number of divisions potentially available to a parent parcel.

The parties' lawyers correctly assess the LDA as not being a model of clarity on this issue. However, the language of Section 108(5) of the LDA, MCL 560.108(5); MSA 26.430(108)(5), suggest that the principle underlying OAG 5929 continues to apply:

> A parcel or tract created by an exempt split or division is not a new parent parcel or parent tract and may be further partitioned or split without being subject to the platting requirements of this act if all of the following requirements are met:
>
> (a) Not less than 10 years have elapsed since the parcel or tract was recorded.
>
> (b) The partitioning or splitting results in not more than the following number of parcels whichever is less:
>
> *
> *
> *
>
> (c) The partitioning or splitting satisfies the requirements of section 109.

Although the principles established in OAG 5929 are not a legally binding precedent, these principles have been relied upon by the legal profession for many years, and one would reasonably expect that the Michigan legislature would have expressed itself in more clear terms if it intended to repudiate these principles. In fact, Section 108(5) of the LDA suggests just the opposite conclusion.

Applying these legal principles, the following conclusions are made regarding the land transactions in this case. The Filut parcel and the Sotelo parcel, as they existed on March 31, 1997, are parent parcels. The transfer of land from the Filut parcel to the Sotelo parcel on July 15, 1999, did not count against the potential divisions available to the Filut parcel under Section 108 of the LDA; but, this transfer did not change the boundary lines of the parent parcels for purposes of determining the number of divisions available under the LDA. The division of the Filut parcel into four separate parcels equaled, but did not exceed, all divisions available to the Filut parent parcel. The divisions from the reconfigured Sotelo parcel on August 10, 1999, violated the LDA, because some of the divisions were made within the Filut parent parcel and the divisions available to this parcel had been exhausted.

Accordingly, the defendant's motion for summary disposition is granted, and the plaintiffs' motion for summary disposition is denied.

October 30, 2001

Anthony A. Monton (P26051)
Circuit Judge

EXHIBIT 2

STATE OF MICHIGAN

NEWAYGO COUNTY CIRCUIT COURT

JEFFREY SOTELO, SUSAN SOTELO, WALTER J. VANDER WALL, individually and as Trustee and PHYLLIS A. VANDER WALL, individually and as Trustee,

Plaintiffs,

v

TOWNSHIP OF GRANT,

Defendant.

_____/

Hon. Anthony A. Monton

Case No. 00-18133-AW-M

STIPULATION AND FINAL ORDER

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Visser & Bolhouse
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Law, Weathers & Richardson, P.C.
Attorneys for Defendant Grant Township
Bridgewater Place
333 Bridge Street, NW, Suite 800
Grand Rapids, Michigan 49504-5360
(616) 459-1171

_____/

STIPULATION

NOW COME the parties hereto, by their attorneys, and hereby stipulate to the entry of the Order below as to form. only.

Respectfully submitted,

Dated: 11/27, 2001

VISSER & BOLHOUSE

By _____
Donald R. Visser (P27961)
Attorneys for Plaintiffs

EXHIBIT 2

Dated: Nov. 29, 2001

LAW, WEATHERS & RICHARDSON, P.C.

By _____
Clifford H. Bloom (P35610)
Attorneys for Defendant

ORDER

At a session of said Court, held on this 11 day of Dec., 2001, in the City of White Cloud, County of Newaygo, State of Michigan.

PRESENT: Honorable Anthony A. Monton
Circuit Judge

Counts I and II of the Complaint in this matter having been disposed of pursuant to the Consent Order entered by the Court on June 18, 2001; and

Cross summary disposition motions having been filed by the parties regarding Count III of the Complaint, the Court having reviewed the various briefs of the parties pursuant to such motions and oral argument having been heard by the Court regarding such motions on September 18, 2001; and

IT IS ORDERED that pursuant to the Opinion of the Court in this matter dated October 30, 2001, summary disposition as to Count III of the Complaint is hereby entered in favor of the Defendant, Grant Township, and against Plaintiffs pursuant to Defendant's Motion for Summary Judgment. Furthermore, Plaintiffs' Motion for Summary Disposition as to Count III of the Complaint is hereby denied. Within 45 days, Plaintiffs shall, by appropriately executing and recording of the appropriate deed(s), combine/recombine the four parcels created out of the Sotelo parcel as it originally existed between July 15, 1999

and August 10, 1999 (which parcel was approximately 5.6+ acres in size) (the "Sotelo Parcel") so that not more than two parcels exist created out of the Sotelo Parcel. Such 45 day time period shall begin to run as of the date that this Order is entered by the Court, if there is no appeal, and if there is an appeal, such 45 day time period shall begin to run after all appeals (if any) have been exhausted to the extent that this Order remains in effect after such appeal(s).

No costs to any party regarding Counts I, II and III, public questions having been involved.

This Judgment resolves the last remaining claims and closes the case.

S/ANTHONY A. MONTON
Circuit Judge

12/11/01

02277 (001) 149599.01

A TRUE COPY
Donna Justice
Deputy Clerk
27th Judicial Circuit Court
Newaygo County, Michigan

EXHIBIT 3

It is my opinion, therefore, that a member of a county board of commissioners who also is a member of a group which has filed a lawsuit against the county board of road commissioners would not, by that fact alone, be in a conflict of interest which would require the county commissioner to refrain from participating in the discussion and voting on the appointment of a member to the county board of road commissioners.

FRANK J. KELLEY,
Attorney General.

PLATS: Requirement for making of plat

The first of two owners of adjoining land who subdivides the land into four one-acre parcels must make and record a plat before making such subdivision of the land, such subdivision being preceded by a transfer of land from one adjoining owner to the other to accomplish the subdivision of each remaining tract into four one-acre parcels.

Opinion No. 5929 June 25, 1981.

The Honorable Bill S. Huffman
State Senator
The Capitol
Lansing, Michigan

You have requested my opinion as to whether a proposed conveyance of land and division of land would require the making and recording of a plat in accordance with the Subdivision Control Act of 1967, 1967 PA 288; MCLA 560.101 *et seq;* MSA 26.430(101) *et seq.*

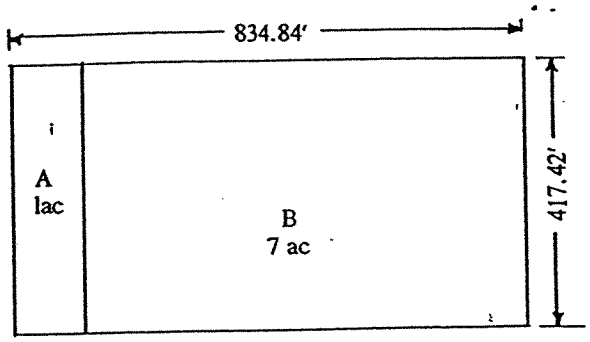
The Subdivision Control Act, *supra,* is designed to protect the public health, safety and welfare through appropriate review of plans for the orderly development of land. *Barton* v *City of Omaha,* 180 Neb 752; 145 NW2d 444 (1966). Review of the proposed plat and conditions required for approval are designed to secure to purchasers adequate ingress and egress to lands subdivided. *Rose* v *Parklane Homes Corp.,* 59 Mich App 542; 229 NW2d 838 (1975). It also serves to protect life and property from the dangers incident to construction in floodplains, and to lend assurance to purchasers that lands to be developed are suitable for building purposes, i.e., that the lands are suitable for placement of septic systems or are adequately served by central sewer and water systems.

The question you raise may be addressed by considering the following factual situation.

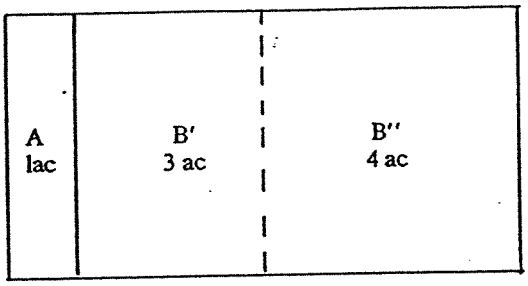
(a) Adams owns a 1 acre parcel (Parcel A) which he acquired in 1970 and has not divided it in the intervening eleven years.

(b) Brown owns a 7 acre parcel (Parcel B) contiguous to Parcel A. Brown acquired Parcel B in 1970 and has not divided it in the intervening eleven years.

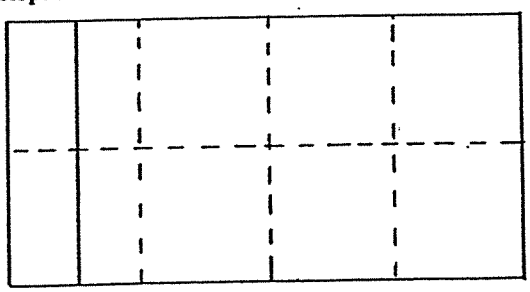
EXHIBIT 3



(c) In 1981 Brown proposes to convey to Adams a 3 acre parcel taken from Parcel B and contiguous to Parcel A.



(d) In 1981 after effecting the conveyance described, Adams and Brown each propose to divide their parcels into four one-acre parcels for purposes of sale or building development.



1967 PA 288, *supra*, § 102, defines "parcel" or "tract" as meaning:

> "[A] continuous area or acreage of land which can be described as provided for in this act"

and defines "subdivide" or "subdivision" as meaning:

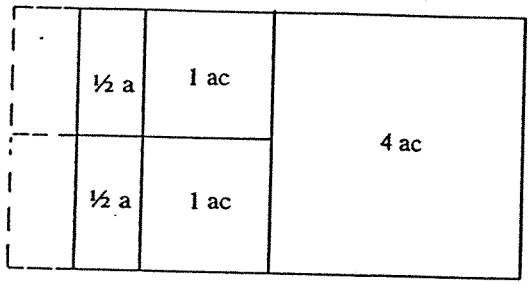
> "[T]he partitioning or dividing of a parcel or tract of land by the proprietor thereof or by his heirs, executors, administrators, legal representatives, successors or assigns for the purpose of sale, or lease of more than one year, or of building development, where the act of division creates 5 or more parcels of land each of which is 10 acres or less in area; or 5 or more

parcels of land each of which is 10 acres or less in area are created by successive divisions within a period of 10 years."

In the example cited, eight parcels each less than ten acres in area would be created within one year from Parcel B.

The first of Adams or Brown to effect a division of his or her ownership into four one-acre parcels is required to make a plat. Should Adams be first in time to make a division of his or her ownership into four one-acre parcels, there would have been created from Parcel B five parcels of land, each of which is less than ten acres:

1 - 4 acre parcel
2 - 1 acre parcels
2 - ½ acre parcels



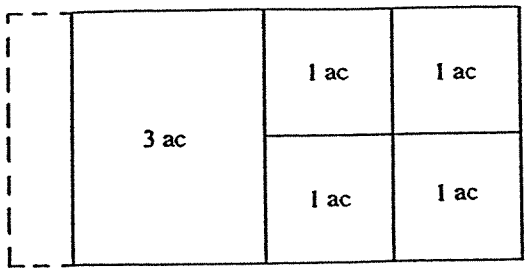
While an assemblage of a four acre tract was effected by the conveyance of a three acre tract to Adams, neither parent Parcels A nor B lose its identity for purposes of determining whether a "subdivision" is effected[1] and a plat required, 1967 PA 288, *supra*, § 103(1) providing:

"Any subdivision of land which results in a subdivision as defined in section 102 shall be surveyed and a plat thereof submitted, approved and recorded as required by the provisions of this act."

Should Adams thereupon plat his or her subdivision, Brown could make his or her proposed division without platting since only four unplatted parcels would be created from the balance of Parcel B. Should Brown be first in time to make a division, there would be created from Parcel B:

4 - 1 acre parcels
1 - 3 acre parcel

[1] The previous opinions of this office discussing "merger" are applicable. In each of the instances there involved, the merger was between parcels taken from the same parent parcel. See OAG, 1977-1978, No 5361, p 610 (September 12, 1978). See also letters to Senator Byker, October 28, 1977; Representative Smith, December 12, 1977 and Representative Smith, March 31, 1970, re division of assemblages.



Thus, Brown would be required to make a plat of the four one-acre parcels.

Should Brown thereupon plat his or her subdivision, Adams could make his or her proposed division without platting since only four unplatted parcels would be created.

The Legislature may wish to amend the Subdivision Control Act of 1967, *supra*, in the interest of a more logical result with respect to the second subdivider to require that such subdivider also file a plat.

In conclusion, in the case described, subsequent to the conveyance of the three acre parcel from Brown to Adams, it is my opinion that the first of Adams or Brown to divide his or her resulting four acre tract into four one-acre tracts must make and record a plat consistent with the provisions of the Subdivision Control Act of 1967, *supra*.

FRANK J. KELLEY,
Attorney General.

EXHIBIT 4

STATE OF MICHIGAN

COURT OF APPEALS

JEFFREY SOTELO, SUSAN SOTELO, WALTER J. VANDER WALL, individually and as Trustee, and PHYLLIS A. VANDER WALL, individually and as Trustee,

Plaintiffs-Appellants,

v

TOWNSHIP OF GRANT,

Defendant/Third-Party Plaintiff-Appellee.

FOR PUBLICATION
February 21, 2003
9:10 a.m.

No. 238690
Newaygo Circuit Court
LC No. 00-018133-AW

EXHIBIT 4

Before: Neff, P.J., and Bandstra and Kelly, JJ.

BANDSTRA, J.

Plaintiffs appeal as of right from the trial court's opinion and order finding that plaintiffs' division of property violated the land division act (LDA), MCL 560.101 *et seq.*, and granting summary disposition in favor of defendant. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Facts

The facts underlying this appeal are not in dispute and were summarized by the trial court in its opinion:

> Prior to July 15, 1999, the land involved in this dispute was divided into two adjacent parcels in the township of Grant: Jeffrey and Susan Sotelo owned a 2.35 acre parcel of land . . . and, immediately to the South, Robert Filut owned a 7.63 acre parcel of land ("Filut parcel"). On July 15, 1999, the size of the Sotelo parcel was increased when Filut conveyed 3.25 acres from his parcel to the Sotelos. After this conveyance, the reconfigured Sotelo parcel [("Sotelo parcel")] consisted of 5.6 acres, and the Filut parcel was reduced to 4.38 acres.
>
> By deeds dated July 15, 1999, the remaining portion of the Filut parcel was divided into four separate parcels which were more than one acre in size, and by deeds dated August 10, 1999, the Sotelo parcel was divided into four separate parcels which were more than one acre in size. The property owners structured

the size of the resulting divisions in an apparent attempt to comply with the township's zoning ordinance that required a minimum parcel size of 1 acre. However, they made the divisions of land without first obtaining the approval from the township as required by the Section 109 of the LDA. MCL[ ] 560.109[ ].

The township informed the property owners that they were in violation of the LDA, and the owners responded by requesting the township to approve the divisions previously made from their land. This request was extensively reviewed by the township; but, ultimately, all the divisions were denied by a resolution passed on July 27, 2000, because the township concluded that the divisions made within these parcels exceeded the number allowed under the LDA.

The plaintiffs commenced this lawsuit to compel the township to approve all of the land divisions. While this lawsuit was pending, the issues involved in the case were reduced to deciding the legality of the divisions from the reconfigured Sotelo parcel, because the parties agreed that the transfer of a portion of the Filut parcel to the adjacent Sotelo parcel and the divisions made from the reconfigured Filut parcel were consistent with Michigan law and the township's ordinances.

Analysis

This case involves interpretation of a statute and a decision on a motion for summary disposition, both of which are reviewed de novo on appeal. *In re MCI Telecommunications Complaint*, 460 Mich 396, 413; 596 NW2d 164 (1999); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The LDA requires a municipality to approve a division of property if the requirements of §§ 108 and 109 of the statute are satisfied. MCL 560.109(1). There is no direct dispute here regarding the requirements of § 109 of the statute;[1] only the requirements of § 108 are at issue. The township argues that plaintiffs' splitting of the Sotelo parcel was not a "division" and, therefore, it was "subject to the platting requirements" of the LDA. MCL 560.108(1).

In pertinent part, the LDA provides that a split of property that complies with § 108 is a "division." MCL 560.102(d). With respect to a parcel of less than ten acres (like the Sotelo parcel), a "division, together with any previous divisions of the same parent parcel" that results in not more than four parcels complies with § 108. MCL 560.108(2)(a). The township does not

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[1] Section 109 provides for local size ordinances such as the one-acre minimum the township has imposed here. MCL 560.109(1)(d), 560.109(5). As explained below, the township's argument is that this requirement was violated through operation of § 108. Further, as noted by the trial court, plaintiffs did not seek the approval of the township before dividing the Sotelo parcel into four separate parcels as required by § 109. MCL 560.109(1). However, the township does not contend that plaintiffs' failure in this regard constitutes a legitimate reason for the split to be disapproved.

argue that there were any "previous divisions of the same parent parcel" here. All that is at issue is the division of the Sotelo parcel after it was reconstituted through the transfer of acreage from the neighboring Filut parcel.[2]

The township instead argues in its brief that, "while land can be transferred between parent parcels for a 'buffer' or to increase the size of a parcel which would have been created anyway, such land transfers cannot be utilized to let property owners take land divisions they would not otherwise be able to create due to zoning size limitations applicable to the original parent parcel." Before the transfer of acreage from the Filut parcel, the original 2.35 acres of Sotelo property could not have been split into four parcels each having one acre as required by the local zoning ordinance. The township's position is that such a split cannot constitute a "division" for purposes of the LDA after the original Sotelo property had been enlarged by the transfer of acreage from the Filut parcel.

The township points to nothing in the statute to support this argument and we can find no support for it there either. As plaintiffs point out, the LDA is in derogation of the common law right to freely alienate real property and, consequently, it is to be strictly and narrowly construed. See *Rusinek v Schultz, Snyder & Steele Lumber Co*, 411 Mich 502, 507-508; 309 NW2d 163 (1981). We will not read into the statute prohibitions on alienation not clearly supported by its language.

Further, while we agree with the parties and the trial court that the LDA is not "a model of clarity on this issue," the available statutory language affirmatively suggests that the split of the Sotelo parcel constituted a "division" not subject to platting requirements. A "division" is defined as "the partitioning or splitting of a parcel or tract of land by the proprietor . . . that results in one or more parcels of less than 40 acres . . . and that satisfies the requirements of sections 108 and 109." MCL 560.102(d). Consistent with that language, the Sotelos, the proprietors of the Sotelo parcel, split that tract of land into parcels less than forty acres and did so in compliance with § 108(2), as noted above.

Similarly, the definition of "division" specifies that, following "a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel . . . any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance." MCL 560.102(d). By converse implication, the statute thus allows for the development of a parcel created by a transfer between adjacent properties if the LDA and local ordinances are satisfied. That describes the situation here. The original Sotelo property was enlarged following a transfer from the adjacent Filut parcel. The resulting enlarged Sotelo parcel would thus be a proper building site; the parcels into which it was divided conformed to the LDA and applicable local ordinances.

---

[2] Moreover, the enlarged Sotelo parcel is not a "parent parcel" because it was not in existence in 1997 when the statutory amendments adding a definition for that term went into effect. See MCL 560.102(i) and 1996 PA 591, § 102, effective March 31, 1997.

In deciding that the split of the Sotelo parcel required compliance with the platting provisions of the LDA, the trial court relied on an opinion of the attorney general concluding that, following a transfer of property between adjacent parcels, the original configuration of the two parcels must be considered in determining whether a land split constitutes a "division" not subject to platting requirements. OAG, 1981-1982, No. 5929, p 237 (June 25, 1981). The trial court applied this opinion by "superimposing" the boundaries of the original Filut and Sotelo parcels. The trial court reasoned that, because a portion of the original Filut parcel had been divided into four separate parcels already, the portion of the Filut parcel that had been transferred to the neighboring Sotelo parcel could not be further divided.

We are not bound by the Opinion of the Attorney General, *Danse Corp v City of Madison Heights*, 466 Mich 175, 182, n 6; 644 NW2d 721 (2002), and we do not find it persuasive. The opinion cites no authority for its conclusion that the original parcels do not "lose [their] identity" following a transfer of property in determining whether a proposed split constitutes a "division." OAG, *supra* at 239. As discussed above, we find no statutory support for that conclusion. Further, since the opinion was rendered in 1981, the statute has been amended to include a definition for "division." See 1996 PA 591, § 102. As noted above, that definition contains language suggesting that, following a transfer of property between adjacent parcels, the "resulting parcel" (not the prior parcels) should be considered in determining whether the requirements of the LDA are satisfied. MCL 560.102(d).

The trial court also reasoned that § 108(5) of the LDA suggests that the principles underlying the Opinion of the Attorney General continue to apply, notwithstanding statutory amendments. Section 108(5) states that "[a] parcel or tract created by an exempt split or a division is not a new parent parcel . . . ." It also establishes requirements that must be satisfied to allow further partitioning without compliance with the platting provisions of the LDA. MCL 560.108(5)(a) and (b). These prerequisites for exemption from the platting provisions are clearly not established here.

However, we find § 108(5) to be wholly inapposite to this case. The Sotelo parcel is not a "parcel . . . created by an exempt split or a division." MCL 560.108(5). The statute's definitional section specifically provides that a division "does not include a property transfer between 2 or more adjacent parcels" as occurred here. MCL 560.102(d). Thus, the Sotelo parcel was not created by a division. Neither was it created by a exempt split. By definition, an exempt split "does not result in 1 or more parcels of less than 40 acres." MCL 560.102(e). The Sotelo parcel was created by the transfer of property from the Filut parcel. That transfer was not an "exempt split" because its result, the Sotelo parcel, was a parcel of less than forty acres.

We conclude that the division of the Sotelo parcel into four separate parcels satisfied the requirements of § 108. Accordingly, the township was required to approve that division under MCL 560.109(1). The trial court erred in concluding otherwise.

We reverse and remand for entry of an order directing the township to approve the division of the Sotelo parcel. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Janet T. Neff
/s/ Kirsten Frank Kelly

EXHIBIT 5

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF NEWAYGO

- - -

JEFFREY SOTELO, et al,

Plaintiff,

-vs-

TOWNSHIP OF GRANT,

Defendant.

File No. 00-018133-AW

SUMMARY DISPOSITION

STENOGRAPHIC RECORD

of the proceedings had in the above-entitled cause in said court on the 18th day of September, 2001, at about the hour of 3:10 p.m., before the HONORABLE ANTHONY A. MONTON, Circuit Court Judge.

EXHIBIT 5

APPEARANCES:

MR. DONALD R. VISSER (P27961)
On behalf of the Plaintiff,

MR. CLIFFORD H. BLOOM (P35610)
On behalf of the Defendant.

BARBARA WILES REPORTING
By: Barbara Lynn Wiles -- #4288
Certified Shorthand Reporter
14179 Hanna Avenue
Cedar Springs, MI 49319
(616) 696-0502

INDEX

WITNESSES:

(None)

EXHIBITS:

(None)

differing views." *Gordon* v *Bloomfield Hills*, 207 Mich App 231, 232; 523 NW2d 806, 807 (1994) (citations omitted).

III. CONCLUSION AND RELIEF REQUESTED

For the above-mentioned reasons, it should be clear that the Trial Court reached the right decision in this case and that the Trial Court's opinion and judgment should have been affirmed by the Court of Appeals. The Township respectfully requests that the Michigan Supreme Court grant leave to appeal in this case, that the Court of Appeals decision be overturned, and that the Trial Court's decision be reinstated.

Respectfully submitted,

LAW, WEATHERS & RICHARDSON, P.C.

Dated: March 12, 2003

By _____
Clifford H. Bloom (P35610)
Attorneys for Defendant/Appellant Grant Township

Bridgewater Place
333 Bridge Street, N.W., Suite 800
Grand Rapids, Michigan 49504-5360
(616) 459-1171

02277 (001) 192492.01

White Cloud, Michigan

Tuesday, 18 September 2001

At about the hour of 3:10 p.m.

R E C O R D

THE COURT: We can take up the case entitled Jeffrey Sotelo, et al, versus Township of Grant.

The attorneys have filed Motions for Summary Disposition in this case, and today is the date and time set for oral argument, and we can proceed to oral argument.

Mr. Visser, would you be first?

MR. VISSER: Thank you, your Honor.

This is our motion, although I will acknowledge, for the record, a cross-motion has been filed by the Defendant in this particular case for Summary Judgment. I think all the parties believe this is the type of dispute that needs to be resolved by the court as a matter of law; although, I think both of us will also acknowledge to your Honor that there's very little guidance for you on this issue. There's no appellate decisions that we are aware of, and there is one older attorney general's opinion, which the Defendant thinks is applicable, and which Plaintiff believes adds credence to

Plaintiff's case in this particular matter.

This is a dispute over the interpretation of the Land Division Act. And if I can briefly show the court what has happened so you factually understand what our dispute is over.

There are two pieces of property here originally at the time of the inception of the Land Division Act. I'll call this Parcel B here (indicating), which was a longer one, and this here Parcel A (indicating). And what happened -- That was owned by a Mr. Filush. Mr. Filush what he did is he sold a piece, this part above the dark blue line, to Parcel A. That's been the subject of a previous Motion for Summary Judgment, it has been granted by the court to recognize, Parcel A has the original Parcel A plus what's been added to it or attributed to it. So at the time the factual dispute or the legal dispute in this case arises, this represents Parcel A. There is no concessions, I don't think by the Township anyway, that that changes legal status as to splits, but this is now a parcel owned by the Sotelos.

This here portion, the remaining portion of Parcel B, was then divided by Mr. Filush and sold to a number of different entities controlled by a Mr. Vanderwal or his wife, so that we have four splits. All parties

would acknowledge that this piece, Parcel B, was entitled to four splits under the Land Division Act. All parties would agree that Parcel A were entitled to four theoretical splits as well under the Land Division Act.

Past that I think there's disagreement as to; What does the Land Division Act allow? Basically, it's our position that this parcel can now be split because it has four available divisions under the Land Division Act, roughly like that, so it would result in four parcels, which would be the maximum allowed.

The Township contends that that somehow was unauthorized by statute, that that results in an impermissible transfer of split rights from Parcel A to Parcel B. Now, the Land Division Act does provide that land division rights can be transferred. In fact, there's a forum for doing so, and it would be on a particular forum to transfer something that can be recorded. That was not done in this particular instance. There were no transfers or attempted transfers from the owners of Parcel A to the owners of Parcel B, and none of that has ever occurred. No one has ever attempted to ever transfer split rights.

The Township I think would say, well, that amounts to a de facto transfer because Parcel A, which could not under the previous zoning be split because it

wasn't large enough, into four, now has resulted in four splits. Or that Parcel B, which could not be divided into seven, has, over a matter of years, ended up being split into seven parcels.

Our response to that is, your Honor, there has been no transfer of split rights, no attempted transfer of split rights, but rather these particular individuals have, in fact, done everything allowed under law.

Our initial brief to your Honor set forth a number of things, and that is, we had some arguments in there relative to the authorities that are granted to the Township to show that the Township's authorities are limited. The reply brief has, I think, removed that issue that it's not an issue in this particular case. I think they acknowledge that they are limited, and that this dispute is solely governed by the Land Division Act, so we're not pulling in some other act, some other ordinances, or anything else. This dispute is resolved then within the four corners of the Land Division Act.

The Land Division Act does obviously impose restrictions on an owner for splitting property. That restriction is in derogation of common law in which one would have the rights to do whatever they wanted to with their property. As such, it's our contention that split

rights have to be strictly construed under the Act. Any derogation of common law has that limiting factor as a strict instruction and it's construed in favor of the land owner as to what it can do.

In this particular instance, this land owner; A), or for that matter A), but this land owner who owns this and then came to own this as well, has the right to make as many splits as they want to unless the Act specifically says; no. Unless the legislature has said in this particular situation; you can't do it. And we would suggest to your Honor that that has not occurred. In fact, the Act specifically sets out in its definition of splits that a transfer from one property to an adjoining parcel, such as occurred here, the first transaction and all the transactions that occurred, is specifically exempted from being called a split. So if it's not a division of the property; what is it? Find something else in the Act to say that that's wrong or improper or whatever. And I suggest to the court that there is nothing in the Act which says that that is not proper, that it cannot be done, and, in fact, I think the legislature has fairly well defined that in fact it is a permissible thing to do and simply does not come under the Land Division Act. It's exempt.

Having said that, how does the Land

Division Act then -- I would rhetorically ask the court -- how does it come in? And we would suggest that it simply does not come in in regulating this transaction. Other than you look at the piece, it is now adjoined, it is merged into Parcel A. If Parcel A has four transfers available to it, it's entitled to use those. I don't think it's any different than as I suggested in my brief, that there are a number of ways to do transactions. And they result under the law with different results. A good example is under the Internal Revenue Code. You go ahead and sell the property, subsequently buy another piece of property, you have capital gains with a new investment and your new gains and a period begins to run for your next property. However, if you structured appropriately under Section 231 of the Internal Revenue Code and do an exchange where one is substituted for the other, there is no recognition of gain. Totally different results as far as one entity is concerned, the Internal Revenue Code, but the very same results as far as the taxpayer is concerned, and there are numerous examples of that in life as well as in the law.

So we believe, your Honor, that in this particular instance, due to the definitions of the Act itself, that the original transaction is exempt, it is not a split, it doesn't constitute a split, it's simply

attributed to Parcel A, and we move on from there.

There is a section of the Act which prohibits a transfer of rights from one parcel to another parcel under the Act, but that involves an objective manifestation where it's attempted to be done through some type of a deed or conveyance, and that was not done in this instance.

Now, there's very little, as I indicated, that either supports or contradicts what I've said to your Honor so far. This is really a case of first impression. In fact, I am unaware of any cases or even attorney general's opinions which have been written on this subject to give the court any guidance. The Township has in its response raised the issue of an attorney general's opinion, which we have suggested to your Honor that the attorney general's opinion simply does not assist, although it first looks like it does, it does not help the Township at all in this particular matter. The attorney general's opinion is, to start with, I would indicate if the law hadn't changed probably fairly close in facts to this particular case. However, the law at the time the attorney general's opinion was written is considerably different than what it is today.

The attorney general's opinion was under the old Subdivision Control Act, and in essence this is

the example that's given by the attorney general.

It had again a smaller Parcel A with a larger Parcel B. The owner of Parcel B transfers over, along this here double-dotted line, to Parcel A, a portion -- and this is done in acres so obviously all these transactions are less than ten acres, -- transfers over what lies left of that line to the owner of Parcel A. Parcel A then goes ahead and makes four splits out of his parcel and the parcel that was acceded to it.

The attorney general then says, well, that violates the Subdivision Control Act because there are now five splits less than ten acres. One being this, two, three, four, and five. And then said, well, interestingly if you reverse the role, so if this person takes his property and splits it, you still have one, two, three, four, and if this person goes ahead and wants to do this, it has one, two, three, four, five. So either way it went the attorney general said, there are five splits which violates the Subdivision Control Act. And that can only be remedied if one of the two parcels, whoever develops first, goes ahead and plats it. If "A" would plat that would mean the remaining portion would be divided into four; these would not be under the Subdivision Control Act because they were platted, leaving four permissible, so that the second person to develop could do so without

violating the Plat Act but the first person could not. Or flip it the other way around. If this person did platting of these four lots and this person would not violate the fifth split.

The difficulty is is that was rendered before the revisions of 1990. And the revisions of 1990 added this important language to that section, this is Section 102(D), and the definition of subdivide or subdivision. They added this language:

"Subdivide or subdivision does not include a property transfer between two or more adjacent parcels if the property taken from one parcel is added to the adjacent parcel."

Now, that's somewhat interesting in light of the attorney general's recommendation, in which the attorney general stated:

"The legislature may wish to amend the Subdivision Control Act of 1967 in the interest of a more logical result in respect to the second subdivider to require that such subdivider also file a plat."

Well, the legislature did address the issue. It rectified the inconsistencies. It rectified it by instead of making the second subdivider also plat, removed the requirement from the first one to plat by simply saying that this transaction, represented on the

left side of this dotted line, no longer constituted a split, and it was now exempt. So now we have a, putting the same facts into that scenario, we would have only four splits on each side of the line after the amendment by the legislature, which is exactly what we are representing to the court today that ought to happen under the new Land Division Act as well. That, at the time of the attorney general's opinion, was not exempted, it has subsequently been exempted as a split, and as a consequence I represent to the court that probably the only help that you're going to get in making the decision would come from this attorney general's opinion in recognizing how the legislature has changed since the attorney general issued its opinion, I think, in 1982.

And as a consequence, your Honor, we believe that Summary Judgment ought to be granted to the Plaintiff in this matter in that the Township ought to be required to recognize the four splits that we're talking about here on Parcel A, and issue appropriate permanent parcel numbers for each of those.

Thank you, your Honor.

THE COURT: Thank you.

Mr. Bloom.

MR. BLOOM: Good afternoon, your Honor. Cliff Bloom on behalf of Defendant, Grant

Township.

MR. BLOOM: As Mr. Visser pointed out, we also have a cross-Summary Disposition Motion as well as defending against Mr. Visser's motion.

Just a couple preliminary matters, your Honor. I'm not going to go into great detail. You actually have four briefs in front of you. You have the Plaintiff's initial brief, my initial brief, Plaintiff's reply brief, and my rebuttal brief, and there's probably very little I can add to those.

I also want to point out that this case, while it might seem arcane to other people from the outside maybe viewing the case, it is very important not only to the parties involved but to other municipalities and Realtors out there and so on. I understand that even though a Circuit Court decision normally is not binding outside the Circuit or County which it's rendered, there are so few cases in this area that the decision in a case like this probably will have impact beyond this County.

I also want to say for the record that this has been a particularly interesting case for me because my adversary, Mr. Visser, has, I think, done a credit to his client. It really makes cases like this more interesting, even with a mundane topic like this.

THE COURT: Yes. Both of you have,

obviously, done a good job in your written materials, so I commend both of you.

MR. BLOOM: Thank you, your Honor.

As Mr. Visser pointed out, there are really three counts in this case; we're on Count III. There were Summary Disposition Motions as to the earlier two, which the Township stipulated to in favor of Mr. Visser's clients.

The first issue was whether or not land could be transferred from original Parcel B to original Parcel A. We never disputed that. The question is, What's the effect of that? The Township's position is, you can always transfer property and make a parcel bigger for purposes of buffer or additional land, you just can't transfer it for purposes of allowing them to take land divisions or more land divisions than they could've originally given the size of the parcel.

Also, we stipulated to Count II that these parcels were okay once we realized what they wanted to do, and that even if the court ordered this be redone, that they were satisfied with these. So Counts I and II were stipulated to.

I would be the first to admit the Land Division Act is not a model of clarity nor was its predecessor, the old Subdivision Control Act. I agree

with Mr. Visser, there are no applicable case law, no applicable appellate cases regarding this issue either under the Land Division Act or the old Subdivision Control Act. This is a technical area. As I indicated earlier in chambers, it gives me a headache every time I have to look at these issues, and I have to deal with them probably a couple times a week. But I would submit that this makes the 1981 attorney general potentially even more important.

I do want to address just very briefly the Township's behavior in this case. I know that the Plaintiffs are frustrated. They felt they had to file a lawsuit, and they implied that somehow the Township drew this out, and only after a lawsuit did we cry uncle as far as Counts I and II. I think you got to back up a little bit. And there seems to be no dispute that when these parcels were created, not the land transfer but the eight parcels all together, the Land Division Act is crystal clear that the people involved have to submit the land division request in an application to the Township so the Township can review it to make sure it meets all the zoning requirements that are applicable. They did not. And so the Township had to go back and say, look, you violated not only the Land Division Act, but the local ordinance, you have to do it right. So they did go back, they filed the application, went through the process and

were turned down primarily because of the issue of how many parcels they could create up here. And hence eventually they did an appeal to the Planning Commission, the Planning Commission upheld the lower township official, they filed the lawsuit. The Township was reluctant just to agree willy-nilly on this because if in fact the Township prevailed here, we didn't know whether that would cause a chain reaction where they'd have to reconfigure these parcels. So again, we respectfully disagree about perhaps the propriety or the non-propriety of not approving that, but the Township had to look at this after there was a technical violation of the law, and didn't want to concede these things until that it was sure there wouldn't be a down roll effect up to now.

I agree with Mr. Visser, this is an interpretation of the Land Division Act, not of the Township Ordinance.

I would also respectfully submit that the Land Division Act is not in derogation of any long-established common law rule, principal, or law.

Mr. Visser has pulled out some cases that say: "If a particular statute is in derogation of a long-established common law, rule, principal, or law, it's got to be narrowly construed." I had not even heard of that case law before, so I pulled it out. With all due

respect, I think it's totally inapplicable to this case. The ability to split land is not a long-established common law, rule, principal, or law.

A long-established rule, principal, or law is something like the rule gets permituity, so the old joint and several liability from joint tort feasors.

Under Mr. Visser's view, every single statute there is would have to bear that heavy burden, and I just don't believe that's applicable in this case.

The Township's position on this I think is relatively simple; that land can be transferred between parent parcels. When we talk about parent parcels, the original parent parcels for "B" was here (indicating), for "A" was up here (indicating). You can transfer for what we call buffer or to add property to lots that otherwise could have been created, but you cannot add property back and forth to allow a property owner to take advantage of the maximum numbers of splits they would otherwise have.

THE COURT: Well, what's the basis for your reasoning, that that's not a permissible purpose?

MR. BLOOM: For two reasons. I think it becomes a de facto transfer of land division rights. Initially this was under four acres. I forget, 2.- something, so under zoning they could only have two parcels up here.

THE COURT: Yes.

MR. BLOOM: They could actually have seven down here, but the Land Division Act only allows four. And it's crystal clear that the Land Division Act does allow a township to deny land division if it doesn't meet the minimum lot size. So originally they had two parcels. It's the Township's position they can add to this bottom parcel and still have two for buffer or whatever you want to call it. But the minute they move the line, they're enabling this to take advantage of the four splits that they couldn't otherwise do. And again, I think it's important, and the attorney general's opinion makes it clear in this part of the attorney general's opinion I think clearly was not overturned by the legislature, a permanent parcel number does not lose its identity. This stays here, and this stays here (indicating). So in actuality you don't have four created out of here, you have one, two, three, four, five, six. Arguably seven. You cannot move the lines for purposes of being a parent parcel, which effectively this does.

In actuality, the attorney general's opinion is really stricter than the Township's position. I mean, if we wanted to -- Putting aside the 1990 legislation for a second. If we really wanted to be harsh about this, the attorney general's view would say; whoever

was the first to split this after the transfer of the land, effectively once they went over four, you know, they had to plat it, or once they went up to four, stab the other guy in the back, and the other guy wouldn't have anything, he would have to plat it. We didn't go that far. We just said basically, hey, we'll allow you the four down here, but we think you're limited to the two up there that you had originally had.

The 1981 attorney general opinion which is No. 5929, I've attached to both of the Defendant's briefs. We would respectfully submit that the 1990 statutory amendment to the old Subdivision Control Act does not overturn the attorney general opinion. The 1990 amendment simply states, if you look at it and analyze it, that the act of transferring land in and of itself does not constitute a land division. So if this had four parcels, simply transferring this up here, they don't lose any parcels, and transferring it up here, again, it doesn't effect the original ones they had.

Before 1990 there was always this issue that if you and I were neighbors and I just wanted to give you a little extra land, that that in and of itself constituted a land division. Most authorities informally thought not as long as the land I transfer to you is being attached to your property. This merely codifies that.

And I would submit that's not really what the attorney general's opinion was all about. The attorney general's opinion was about maintaining the boundaries of the original parent parcel, and not allowing people to transfer land from one parent parcel to the other to facilitate the original parcel that was too small to use up all its land division rights.

With respect to Plaintiffs, we think they're confusing two distinct, separate concepts.

The first concept is whether or not the transfer of land between one parcel and another constitutes a land division. That's what the 1990 amendments were about.

The second separate concept is whether land can be transferred from one parent parcel to another parent parcel to allow the receiving parent parcel to take advantage of land divisions that otherwise couldn't.

We submit that's primarily what the attorney general's opinion dealt with, and that was not overturned by the 1990 amendments.

Plaintiffs key in on the words "resulting parcels" in the 1990 amendments. I'm not sure I entirely follow their argument, but it should be pointed out that resulting parcels means any parcel created. It doesn't say parent parcel. So again, I think that reinforces the

idea that the parent parcel boundaries remain the same. Again, like so many other parts of the Land Division Act, the Subdivision Control Act, the 1990 Amendments, are very confusing, for nothing else because of their punctuation. They talk about a property transfer between two or more adjacent parcels are not a land division as long as the one property is added to another parcel. Then it goes on to say: "Any resulting parcel should not be considered a building site unless the parcel conforms to the requirements of this Act or the requirements of an applicable local ordinance." It's not clear to me whether that modifies the preceding sentence because they use some bizarre punctuation, or whether it modifies the whole definition of division. I think basically what they are saying is: If you want to add property to any parcel, whether it be from here to here or even across parent parcel boundaries, it's not a division as long as you attach it to the other property; that you're not floating it out here, you're not cutting this off out here, and just making it a floating parcel. And they are saying ultimately whatever parcel or parcels you create, whether it's between two non-parent parcels or parent parcels, if you're going to sell those parcels as separate lots, they've got to meet all of the zoning requirements and so on.

This is a technical area. It's a close call. I think in a case like this the court might want to consider falling back on some of the general case law that says that the statute should never be interpreted to lead to absurd results, and I think this would lead to absurd results under the Plaintiffs' view. I've already given examples. I could have an infinitesimally small parent parcel, and if the person next to me has a large parent parcel that they either don't want to develop or they've got excess land in order to be able to meet the Land Division Rights they have, they can transfer it to me and I might not have the right to have any parcel or infinitesimally small. By transferring land to me under the Plaintiffs' view they can give me up to four land division rights and that just doesn't seem right. It seems like that's somewhat of a sham transaction. We would submit there's no hardship on Plaintiffs in this particular case. If the court rules in the Township's favor that doesn't mean it's the end of it. Plaintiffs still have the right of platting, which is, albeit, a longer process that can be expensive, or they can do a site condominium project. Under either of those cases the number of land divisions don't apply.

Basically, your Honor, that's it as far as Grant Township, and again, I rely on our briefs.

MR. BLOOM: Thank you.

THE COURT: Thank you.

Anything else, Mr. Visser?

MR. VISSER: I do have a few comments.

I think, your Honor, Mr. Bloom made reference to the fact that putting aside the 1990 revisions that the attorney general's opinion would be harsher. I think putting aside the 1990 revisions would put us in a situation right where what the Township was advocating right now, and that is was that we would have to -- this transaction would require platting.

Having said that, one then must ask whether the 1990 revisions mean nothing to the Township, and that's what apparently the position that they are in, simply saying that it doesn't matter that this is what the law was before, and now that the legislature has exempted that it just simply means nothing. Obviously it does mean something and I don't think this court ought to ignore those logical consequences.

I think it's -- one thing that kind of strikes me as quite unusual is the fact that while the Township is fighting this particular transaction, and that is a horizontal splitting of this parcel, the same type of argument would not hear from them relative to a vertical splitting of the properties because in that particular

instance part of A would be in each parcel. At this particular point they are saying, you know, well, these are four splits, and this property has been attributed to there, this to here, this to here, and this to here. I think that's -- if one talks about absurd results, that that would be somewhat absurd to me that depending upon which way it would be split, you get different results.

I would also like to address real quickly the comments I've made in my brief and previously regarding the derogation of common law.

If the court wishes, we of course can brief that issue in more detail, but that's what the Subdivision Control Act was put in place for. That's what the Land Division Act was put in place for, and that is is to restrict those rights that one would otherwise have to make parcels here, there, and everywhere; and one doesn't look back simply to what existed, what statutory scheme existed prior to an action of the Land Division Act, but one looks back to what existed prior to the enactment of any legislation restricting. That's what defines the common law and that's what we had in this particular case. The Subdivision Control Act showed that derogation of common law that we have are these restricting acts, and as such they have -- the restrictions have to be very strictly and narrowly construed.

Finally, I would ask the court to take a look at the definitions that exist under Section 102 of the Land Division Act. It is interesting, at least to me, and maybe the court won't think it's nearly as interesting, but it is interesting to me that division as defined in Subsection D means: "The partitioning or splitting of a parcel or a tract." And it does not make reference to parent parcel or parent tract. It talks about parcel or tract. Subsection I defines what a parent parcel is and a parent tract. So when we finally get down to "D" we're not talking the restriction, and the discussion is not talking about original parent tracts anymore, the division is talking about tracts. And in fact further down in that definitional phrase of Subsection D, the language again is carried over from the 1990 revision of the Subdivision Control Act, it says: "Division does not include a property transfer between two or more adjacent parcels." It doesn't say anything again about parent parcels. "If the property taken from one parcel is added to the adjacent parcel." And then it -- in my mind anyway, your Honor, the next phrase I think is indicative of what the legislature did and did not mean. And it says: "And any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this Act or the requirements of the

local ordinance." Had the legislature said that they wanted to incorporate those restrictions all the way through, they could have put a similar thing, and any resulting parcel shall also satisfy the Land Division Control Act in every way from the parent parcel. The only restriction they put on, they talk about the resulting parcel is that it has to -- that it will not be considered a building site. It doesn't say, won't be considered a legal piece. It doesn't say anything about that. It simply says, the resulting piece shall not be considered a building site. And no one's asking, I think the Township admits this does meet the definition, but if it did, no one is asking this court to declare it a building site, it's just simply saying, declare it to be a legal piece that's entitled to its own parent parcel.

Thank you, your Honor.

THE COURT: The case is submitted, I'll do some research, read your briefs again, and do a written opinion on the issue.

Thanks, gentlemen.

MR. BLOOM: Thank you, your Honor.

MR. VISSER: Thank you, your Honor.

(Whereupon proceedings concluded at about 3:47 p.m.)

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STATE OF MICHIGAN

SS

COUNTY OF NEWAYGO

I, Barbara Lynn Wiles, hereby certify that I am a Court Reporter for the 27th Judicial Circuit of Michigan; that I reported the proceedings had in the aforementioned cause, and that the preceding pages represent a true and correct transcript of the proceedings had in said cause, on said date.

Barbara Lynn Wiles

Barbara Lynn Wiles – CSR #4288

My commission expires: 2/21/2005

22 January 2002

EXHIBIT 6

GRANT TOWNSHIP
PLANNING COMMISSION

In re VANDERWALL/SOTELLO LAND DIVISION MATTER

DECISION OF THE GRANT TOWNSHIP PLANNING COMMISSION

FACTS

The overall property at issue is approximately 9.98± acres in size and is located at the corner of 124th Street and Peach Avenue. It is presently owed by at least two parties (Walt VanderWall and Jeffrey Sotello). Before 1997, the property consisted of two parcels (lots 1 and 2), as shown on Exhibit A as attached hereto. Since 1997, the property owners have attempted to divide the pre-existing two parcels into 8 new parcels overall as shown on Exhibit B as attached hereto. In other words, prior to 1997, there were two parcels in total. Today, the property owners have attempted to create 8 parcels in total as shown on Exhibit B. By the property owners' own admission, they did not receive land division approval from the Township before creating the new parcels.

On or about March 28, 2000, Grant Township ("Township") denied the proposed 8 land divisions. On or about April 29, 2000, Mr. VanderWall filed a notice of appeal with the Township regarding the land division denial. Mr. VanderWall retained attorney Donald R. Visser to represent him in this matter.

Pursuant to the Grant Township Land Division Ordinance, an appeal from a denial of a land division approval is heard by the Grant Township Planning

EXHIBIT 6

Commission ("Planning Commission"). The Planning Commission held a hearing on Thursday evening, June 15, 2000 regarding this matter. Both Mr. VanderWall and his attorney were present. After hearing from officials from the Township as well as Mr. VanderWall and his attorney and several members of the audience, the Planning Commission voted to tentatively deny the proposed land divisions for the reasons discussed on the record and to ask the Township Attorney to draft a formal decision resolution (which is this document). At its meeting on July 27, 2000, the Planning Commission formally adopted this document as its decision in this case.[1]

[1] The following is Attorney Visser's position and arguments in this matter, much of which the Planning Commission disagrees with. Mr. Visser contends that all 8 requested parcels are permitted under the Land Division Act. For ease of reference, Lot 1 refers to the northerly most parcel which existed on March 31, 1997 and was approximately 2.35 acres in size. Lot No. 2 consists of the southerly parcel on March 31, 1997 of approximately 1006.27 feet in width along 124th Street. The first transaction entered into by the former owner of this property was to transfer the northerly 430.27 feet of Lot 2 to the owner of Lot 1. The Township's attorney agrees that this transaction is exempt under the Land Division Act under Section 102(d). His terminology for this type of transfer is a transfer of "buffer". Pursuant to the terms of this Section, this portion of Lot 2 was then transferred to Lot 1 and added to Lot 1.

After the transfer of "buffer" to Lot 1, 576 feet of road frontage remained in Lot 2. That was divided by the former owner into 4 lots of 144 feet in width. It is those 4 splits from Lot 2 that was originally denied by the Township and Mr. Vander Wall is asking the Board to reverse on appeal.

Mr. Jeffrey Sorello and Walt Vander Wall have also requested the Board to reverse the Township's denial of 4 splits coming from Lot 1 which now includes the "buffer" property. Mr. Visser contends that under the language of the Act, since Lot No. 1 could legally be divided into 4 Lots under the Land Division Act, that those 4 legally permitted splits may be taken anywhere out of the whole of Lot 1 with the "buffer" property added to it. He contends that no split rights are being transferred by that the "buffer" property is added to Lot 1, incorporated into Lot 1, and is merged into Lot 1. The Act describes the parcel to which "buffer" has been added as a "resulting parcel". Resulting parcel is not defined by the Act; only "parcel" is defined by the Act. As a consequence, the Township does not have a basis for denying a split of this parcel. The parcel has 4 splits available to it. The effort of the Township to describe this "buffer area" as a separate piece of property or as a part of Lot 2 does not comply with the Land Division Act. While the Land Division Act prohibits transfers of split rights from 1 parent parcel to another parent parcel, it does not prohibit utilizing of the split rights in this way if the landowner wants to split the property of a legally defined parcel – even if that parcel contains "buffer". A statutory restriction on an owner's right to utilize the property in any way that he wants to, must be narrow construed. Since this transaction is not clearly prohibited by statute, the Township had no authority to reject the 4 spits requested out of Lot 1 (the "resulting parcel").

DISCUSSION AND DECISION

The proposed land divisions must be carefully scrutinized under the Michigan Land Division Act ("Act"). The key date regarding how many land divisions are permitted is March 31, 1997. The properties at issue existed as of that date as follows:

Lot 1 – one parcel

Lot 2 – one parcel

After March 1, 1997, Lot 1 could be split into no more than four (4) parcels in total. Furthermore, Lot 2 could also be split into not more than four (4) parcels. Obviously, each resulting parcel must still comply with the area requirements of the Grant Township Zoning Ordinance, since the Act does not displace local zoning requirements.

Mr. VanderWall and Jeffrey Sotelle apparently believe that since the two parcels which existed as of 1997 (*i.e.* Lots 1 and 2) are permitted to be split into four parcels each, that a total of eight parcels can be taken from one or both parcels or as combined. That is not correct. All four land divisions permitted on the original Lot 1 must be taken within the boundaries of the original Lot 1. Furthermore, the four land divisions permitted within the property originally comprising Lot 2 must also be taken within the original property boundaries of that property. Land division rights cannot cross or be transferred between the boundary lines of the original parent parcel/parent tract.

While it is true that some property from the original parent parcel can be added onto another parent parcel for purposes of "buffer," such transfer cannot increase the

number of land divisions allowed for the recipient parcel - land division rights cannot be transferred to, from, or across boundary lines of parent parcels/parent tracts.

Based on the above, what is labeled as Lot 1 can be split into no more than four parcels within Lot 1, but only if it meets all of the zoning requirements. Lot 2 can only be split into a total of four parcels. Accordingly, the proposed configuration by the landowners would violate the Act and cannot be approved. To the extent that Lot 1 has been split into more than four parcels (which appears to be the case), that would be a violation of both the Act and the local Grant Township Land Division Ordinance.

Based on the above, what formerly constituted Lot 2 can only be divided into four parcels in total. Although what was formerly Lot 1 can theoretically be divided into four parcels, in actuality it can only be divided into two parcels since it was 2.85± acres in size and the minimum lot size requirement under zoning is 1 acre. Accordingly, in total, the overall property can only result in the creation of six (6) parcels in total, with four parcels located in the area formerly comprising Lot 2 and two parcels in the area formerly comprising Lot 1.

Based upon the representations made by Mr. VanderWall at the June 15 hearing, it appears that the last four parcels created were done primarily out of what formerly constituted Lot 1. Accordingly, within 60 days of the date of this decision, the property owners involved must record a deed or deeds combining and/or reconfiguring property lines so that it will result in no more than two parcels existing in the area formerly comprising Lot 1 and no more than four parcels in the area formerly comprising Lot 2. Prior to that occurring, however, the parties must submit a new land

division application to the Township with the proposed reconfigured parcels for review and approval by the Township.

The above resolution was offered for adoption by Planning Commission Member Jan Lesley, and was seconded by Planning Commission Member May Mellon, the vote being as follows:

YEAS: May Mellon, Tim Mattis, Jan Lesley, Marcia Zenk, Deb Dexter

NAYS: 0

ABSENT/ABSTAIN: Mick Darlaker, Cathy Weir / Larry Gross

RESOLUTION DECLARED ADOPTED.

CERTIFICATION

I hereby certify the above to a true copy of a resolution adopted by the Grant Township Planning Commission at a meeting held on July 27, 2000, at Township Hall pursuant to the required statutory procedures.

Dated: July 27, 2000

Respectfully submitted,

By Yllura Gross

Secretary
Grant Township Planning Commission

02277 [001] 10ES31.02

IN THE SUPREME COURT

STATE OF MICHIGAN

JEFFREY SOTELO, SUSAN SOTELO, WALTER J. VANDER WALL, individually and as Trustee and PHYLLIS A. VANDER WALL, individually and as Trustee,

Plaintiffs/Appellees,

v

TOWNSHIP OF GRANT,

Defendant/Appellant.
_____/

Supreme Court No. _____

Court of Appeals
Case No. 238690

Lower Court:
Newaygo County Circuit Court
Case No. 00-018133-AW-M

NOTICE OF HEARING

PLEASE TAKE NOTICE that hearing on the **Application for Leave to Appeal of Defendant/Appellant Grant Township** will be held on Tuesday, April 15, 2003 at 9:00 a.m. before the Court at 925 W. Ottawa Street, Lansing, Michigan, or as soon thereafter as counsel may be heard.

Dated:March 12, 2003

LAW, WEATHERS & RICHARDSON, P.C.

By: _____
Clifford H. Bloom (P35610)
Attorneys for Defendant/Appellant
Grant Township
333 Bridge St., N.W.
Suite 800
Grand Rapids, Michigan 49504
(616) 459-1171

02277 (001) 193601.01

IN THE SUPREME COURT
STATE OF MICHIGAN

JEFFREY SOTELO, SUSAN SOTELO, WALTER J. VANDER WALL, individually and as Trustee and PHYLLIS A. VANDER WALL, individually and as Trustee,

Plaintiffs/Appellees,

V

TOWNSHIP OF GRANT,

Defendant/Appellant.
_____/

Supreme Court No. _____

Court of Appeals
Case No. 238690

Lower Court:
Newaygo County Circuit Court
Case No. 00-018133-AW-M

Susan V. Johnson, being sworn, states that on March 12, 2003, she mailed copies of the Notice of Hearing and Defendant-Appellant's Application for Leave to Appeal to:

Donald R. Visser, Visser & Bolhouse, P.C., Grandville State Bank Building, Grandville, MI 49418.

Clerk of the Michigan Court of Appeals, Hall of Justice, 925 W. Ottawa Street, P.O. Box 30022, Lansing, MI 48909-7522

Clerk of the Newaygo County Circuit Court, 27th Judicial Circuit, P.O. Box 885, 1092 Newell, White Cloud, MI 49349

by placing the documents in the United States mail, properly addressed, with first-class postage fully prepaid.

Susan V. Johnson

Subscribed and sworn to before me
on March 12, 2003.

Wanda L. Taylor
Notary Public, Kent County, Michigan
My commission expires: 09/14/03

02277 (001) 193487.01